











# INDIAN CONSTITUTIONAL DEVELOPMENT

(1773 - 1947)

By

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## PREFACE

Some years ago I wrote a book entitled *Indian Constitutional Development and National Movement* to meet the requirements of the B. A. students offering Political Science as one of their optional subjects. It was found useful by the post-graduate students also, even though the treatment of constitutional development prior to the introduction of Montford Reforms was brief and sketchy. The opportunity presented by the demand for a new edition of the book has been utilised for a thorough recasting of it with a view to adapting it to the needs of our post-graduate students. A comprehensive and detailed account of the developments from the Regulating Act of 1773 to the Indian Independence Act of 1947 has been given. Since our constitutional development from 1858 has been profoundly influenced by the national movement in the country, some account of it became absolutely necessary. But the space devoted to the growth of the national movement is much less in this book than in its predecessor. Much of the discussion of the Government of India Acts of 1919 and 1935 has been taken over from the earlier volume. Taken as a whole, the volume cannot be regarded as an edition of the earlier; it is in many ways a new book. One of its important features is the discussion of the forces which prepared the ground for the various Acts passed by the British Parliament.

It was my intention to include a study of the Constitution of the Indian Republic in this volume. But due to several reasons I have decided to publish it as a separate and independent volume. It would be presented to the readers within a few months.

The books on which I have mainly relied in preparing this volume have been referred to in the footnotes. The more important of them are the following: *Landmarks in Indian Constitutional and National Development* by Shri Gurmukh Nibal Singh; *The Constitutional History of India* by Punniah (now unfortunately out of print); *Renascient India* by Dr. Zacharias; *India: A Restatement* by Prof. Coupland; *India Since Mutiny* by G. Y. Chintamani; *Autobiography* and the *Discovery of India* by Jawahar Lal Nehru; *A Constitutional History of India* by Dr. B. Keith; *The Cambridge History of India*,

Vols. V and VI, and the additional volume by Dr. R. R. Sethi; *The Government of India* by Principal Chuni Lal Anand; *Indian Constitutional History* by Principal Shri Ram Sharma, and Cowell's *Lectures*. One of the best accounts of the communal problem is contained in Asoka Mehta's volume: *The Communal Triangle in India*. Students would find a good account of the events in India between 1937 and 1947 in Dr. Amiya Chatterji's volume: *The Constitutional Development of India: 1937-1947*.

Due to my absence from Meerut the burden of reading and correcting a major part of the proofs fell upon the shoulders of my friend and colleague Prof. R. S. Yadav, Head of the Department of Sociology, Meerut College. But for his readiness to undertake this dull and onerous task the book could not have been presented to the readers for another four or five months. I am deeply grateful to Prof. Yadav for this labour of love.

Vijay Mandir,  
Civil Lines, Meerut.  
October 20, 1960.

JYOTI PRASAD SUDA

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# PART I

## INDIA UNDER THE COMPANY

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### CHAPTER I

#### THE EAST INDIA COMPANY

##### THE TRADING PERIOD: 1800-1765

**Introductory.**— The constitution of a country is never a life-less and static thing ; it is a living entity subject to life and growth. It is a going concern, always carrying something from the past into the present and from the present into the future. In order to know it fully as it may be at a given point of time, one has to dive into its past and study how it has come to assume its existing shape and form. An insight into the working of the minds of those charged with the responsibility of managing the affairs of the state would also be very helpful, if it could be had. It is however ignored by those who are interested in tracing the origins and development of the constitutional history of a country. In the present volume our concern is to study the growth of the Indian Constitution from the time of the arrival of the East India Company for purposes of trade. We need not extend our mental horizon and study the way in which the country was governed by the Hindus in the olden days and by the Muslims in the medieval period. The legacy we have inherited from the past— it is a very rich legacy of which any nation can be proud— is more socio-religious than political. The political institutions built by the Hindus during the period of their ascendancy in ancient times and by the Muslims when they wielded the sceptre have become a thing of the past ; they do not survive in any form in the present days. When the British acquired political power in our country, they ignored them almost completely and built a wholly new structure based on their experiences in England. They could not, however, wipe off our social inheritance ; it continued to mould and shape our lives and activities during the British period and is still operative. Our caste system, our social exclusiveness, our poverty, our illiteracy, our prejudices and superstitions, etc., influenc-

ed the growth of our national struggle and the development of the constitution since 1857. Any one who desires to understand the complexities of our political life to-day must pay attention to the social and economic factors whose operation can be traced to a distant past. We cannot go into them here. We shall begin with the advent of the British here.

**Divisions of the Subject.**— The development of the constitution under the British falls into two periods : the one under the rule of the East India Company, and the other under the rule of the Crown. The year 1858 is the dividing line ; it marks the end of the first and the beginning of the second period. The first period can be subdivided into two parts ; the first one lasting from the formation of the East India Company in 1600 to 1765, during which it was a trading corporation ; and the second one commencing from the acquisition of political power by the Company as a result of its victory over the Nawab of Bengal in the battle of Plassey in 1765. It was during the second part that the affairs of the Company came to be controlled by the British Parliament.

The period of rule by the Crown can also be divided into two parts. The first one lasts from 1858 to 1919. This is known as the period of representative institutions. It was marked by the rise of a strong nationalist movement in the country. The British Government in Great Britain sought to meet the situation created by it by various measures of decentralisation and by establishing legislative councils containing a popular element whose numerical strength was increased from time to time, but without giving any power to the sons of the soil. It was during the second period which begins with the enactment of the Government of India Act of 1919 that self-government was gradually and progressively introduced. It came to an end in 1947 when India became a fully self-governing Dominion. India became a fully sovereign democratic republic in 1950.

In this chapter we shall deal with the coming of the British to India and the rise of the East India Company to a position of power in the country. In the next we shall trace the growth of the constitution under the Company from 1773 down to 1858.

**The Coming of the British.**— Before the appearance of the Portugese, Dutch, English and French traders on the Indian scene

the trade between India and Europe was carried by the land route. Caravans used to take the products of India and the Far East—spices, metal-works, gems, silk, textiles—to the Mediterranean from where they found their way to European markets. Genoa and Venice were the main centres of distribution. The overland route became unsafe as a result of raids by the Turks and the Mongols; for some time it was barred by the Turkish government also. The Portugese who had acquired the art of ocean navigation wanted to find a sea-route to India with a view to diverting the trade to their own country and making Lisbon the centre for distributing goods of Indian and eastern origin. By the end of the fifteenth century they succeeded in rounding the Cape of Good Hope and reaching the west coast of India after crossing the Indian Ocean. Under the leadership of Albuquerque and Almeida they obtained command of the Indian Ocean and established fortified strategic posts at most of the key points. Their capital was Goa. The Dutch, who also wanted to capture the highly lucrative Indian trade, became serious rivals of the Portugese; but their main field was Malaya Archipelago. The Britishers were also attracted by stories of the fabulous wealth of India, and with the example of the Portugese before them, tried to find a new sea-route to this country. They did not succeed in their aim, and finally decided to take the route round the Cape of Good Hope as a result of the growing naval might of England under Queen Elizabeth. A number of enterprising London merchants formed themselves into the East India Company in 1599 with the object of trading with India and the Far East. This Company received the Royal Charter from Queen Elizabeth on the last day of 1600. It gave the Company the exclusive right of trading in the East and authorised it to keep an armed naval force of limited size for its protection.

The purpose of the Company was purely trade. This becomes clear if the terms of the Charter granted to it are compared with those of the Charters granted to the Virginia and other Companies which were to operate in North America. Whereas the latter were intended to acquire territory in the New World and establish on it plantations of English colonists with a view to the exploitation of its mineral and agricultural resources, the Indian Company was to confine itself to trade alone, and the trade was to

be conducted by peaceful enterprise and agreement and not by force. The first act of the East India Company was to send an envoy to the Mughal Emperor at Delhi to obtain his permission for setting up commercial settlements, known as 'factories', and to administer them under their own laws. Sir Thomas Roe, who was sent by James I as his ambassador to the court of Jehangir at Delhi in 1615, asked the East India Company to avoid the mistake of the Portugese who sought to acquire territory by military adventures for maintaining garrisons, and of the Dutch who sought 'plantation by the sword'. He said : 'Let it be received as a rule that, if you will profit, seek it at sea and in quiet trade ; for without controversy it is an error to affect garrisons and land wars in India.'

In the course of the following hundred years and more this wise rule was broken only once. Towards the end of the seventeenth century Sir Josiah Child, whose influence was mainly responsible for the royal favours received by the Company after the Restoration of monarchy in England, wanted to strengthen the Company after the model of the Dutch East India Company, and in view of the conditions prevailing here intended to 'lay the foundations of a large, well grounded, sure English dominion in India for all time to come.' He was able to secure a remarkable extension of the political and judicial powers of the Company ; namely, the power to raise military forces, to execute and use martial law, and make peace and war with non-Christian nations. (Charter of 1683). In the attempt to realise his vision of a British Empire in India he found an excuse for the declaration of war by the Company on the Mughal Empire, and despatched ten ships and six hundred men to reduce Aurangzeb to submission. The adventure ended in a disaster to the Company which was compelled to evacuate all its settlements in Bengal. It was the Company's command of the sea and its power to interrupt the Haj traffic to Mecca that induced Aurangzeb to listen to overtures of peace and to permit the Company to trade on the condition that it would not behave in the same shameless manner again. The Company reverted to peaceful trade.

The situation which developed in the country after the death of Aurangzeb did not, however, let the Company confine itself to peaceful trading. It could not resist the temptation to take full advant-

age of the disturbed and chaotic conditions that prevailed in different parts of the country as a result of the disintegration of the Mughal Empire ; its agents and servants found the exercise of political power more advantageous and paying than 'peaceful trading'. Before proceeding to describe the conditions under which the Company was led to extend the scope of its activities and participate in the struggle and strife for political power, we may mention one vital fact which profoundly affected the course of Indian history. This was the hostility towards the Company shown by the Dutch who did not want any European intrusion in their preserve in the Malayan Archipelago. The Dutch massacred the English merchants at Amboyna in 1623. This event compelled the East India Company to abandon the idea of trading with the Far East and concentrate its attention on India. Originally it thought of paying more attention to trade with the Far East than to the trade in India.

**The Company Acquires Political Power.**— Two factors were mainly responsible for inducing the Company to give up the policy of 'peaceful trading' and take part in political struggles. As pointed out above, one of them was the unsettled and chaotic conditions in different parts of the country produced by the gradual disintegration of the Moghul Empire that had set in even before the death of Aurangzeb. The other was the rivalry and conflict between the British and French companies each of which was anxious to get the upper hand over and vanquish the other. The two factors interacted. It is not necessary to go into details here. It is sufficient to say that soon after the death of Aurangzeb the controlling and unifying power of his successors greatly declined and their authority was confined to the area round about Delhi. In Bengal and Bihar and in the northern part of Carnatic and Hyderabad the Mughal Nawabs had set up independent autocratic states. In Central India the Marathas were very powerful ; their hordes swept unchecked through the heart of the country, carrying 'murder and mutilation, arson and rapine' wherever they went. The discipline which Shivaji was able to impose upon his followers no longer existed. In the words of Moreland and Chatterji 'they slay the unarmed, the poor, women and children. They rob all property and abduct chaste wives.' In the South Hindu kingdoms were restored in Mysore and Travancore. In short, all such political unity as India had possessed from Akbar to Aurangzeb

disappeared, 'and everywhere the local magnates, heads of old tribal or caste communities or ambitious upstarts and soldiers of fortune, were scrambling for territory and power. Legal prescription was no longer valid. Everywhere might was right.\* Under such circumstances the East India Company could no longer depend upon the license it held from the Emperor of Delhi for protection ; it had to look to its own resources. It strengthened its fortifications and enrolled more sepoys. Probably the Company adopted these measures for defensive purposes and not with a view to aggressive warfare. But it soon found itself involved in a grim struggle with the French East India Company which had been formed in 1664 and had established commercial establishments at Pondicherry and a few other points on the coast and in Bengal.

Dupleix, who was the governor of Pondicherry from 1742 to 1754, conceived the idea of establishing a French dominion in India as had been done earlier by Josia Child in England. With that end in view he tried to obtain ascendancy over the local despots of Southern India. He intervened in a dispute occasioned by the death of the ruler of Hyderabad and put his candidate on the throne, and thus brought the state under French control. He tried the same tactics in Carnatic. But he found that the British had forestalled him and set up their own protege whom they were backing. The result was open war between the English and the French in India in which the latter were finally beaten. The person who was mainly responsible for defeating the French was Robert Clive.

The exploits of Dupleix and Clive in the South frightened Siraj-ud-Daula who had succeeded Aliwardi Khan as the ruler of Bengal in 1756. He had been closely watching the European settlers on the Hugli and felt apprehensive lest they should repeat in Bengal the operations which had involved the overthrow or death of four Muslim rulers in Carnatic and the Deccan. The English had set up new fortifications and new batteries on the river side with a view to defending their factory against a possible French attack. Siraj-ud-Daula demanded an explanation and ordered the removal of the new defences. The governor of the British establishment refused compliance with the order. Thereupon the Nawab attacked Calcutta and took it. Some of the Britishers fled and others were

taken prisoner and lodged in a small room where many of them were reported to have died of suffocation. This is known as the tragedy of Black Hole. Some historians regard the story as a fabrication. It is not relevant to our purpose to discuss the question whether the tragedy ever took place or was a fabrication. We are concerned with the events which followed it. The British authorities at Madras promptly despatched ships and troops to Calcutta under the command of Clive who easily recaptured it. The Nawab made peace with the British by promising to restore all their former privileges and making good the losses they had suffered and allowing them to set up batteries on the river bank. This was not, however, the end of the matter. Thinking that Siraj-ud-Daula was not playing fair but was seeking the help of the French against the British, Clive marched his army against the ill-equipped and poorly led forces of the Nawab and inflicted a crushing defeat on them at Plassey. He installed Mir Jafar as the Nawab. The shadowy suzerainty of the Mughal Emperor was also recognised. But the authority of the Nawab was only nominal; real power belonged to Clive and his men. It can be said that the foundations of the British rule in India were laid in 1757 as a result of Clive's Victory over Siraj-ud-Daula.

Clive resigned and left for England in 1760. But he was sent back as Governor of Fort William in 1763. On arrival he made a political settlement according to which Shah Alam agreed to grant the Dewani of Bengal, Bihar and Orissa, to the Company in return for a sum of 26 lakhs of rupees to be paid to him annually out of the revenues of the province. The Emperor also agreed to separate Carnatic from Hyderabad and to cede the Sirkars to the British. In order to be able to consolidate the gains so far made, Clive sought to avoid clash with the powerful Marathas. To that end he recognised their right to *Chauth* in Orissa. He also allied himself with the Nizam in order to balance the power of the Peshwa in the Deccan. In these and other ways Clive strengthened the position of the Company in India and laid the foundations of the British Empire. Fortunately for the British, the strength of the Marathas who alone could check the advance of British power in India was greatly weakened by their defeat at Panipat. The way was thus clear for the British.

The work of founding the British Empire in India begun by Clive was continued by Warren Hastings, Wellesley and other governors-general. It is not relevant to our purpose to trace the steps by which the East India Company became the greatest political power in the country; the story of the establishment and expansion of the British empire belongs to history. What we wish is to emphasise the fact that in the highly unsettled and chaotic conditions prevailing in the country which were the result of the fast disintegration of the Mughal Empire after the death of Aurangzeb the East India Company found an atmosphere highly favourable for the growth of its political power. The war between England and France in Europe and the suspicion that the French might make common cause with the Marathas and the Nizam in their opposition to the British provided an excuse to Lord Wellesley to intervene in the disputes between the Peshwa and the Maratha chiefs and to support the Peshwa as the overlord of the Maratha Confederacy at the price of his recognition of British paramountcy. The second point which we want to stress is the radical change wrought in the character of the East India Company as a consequence of the growing political power, of its becoming one of the 'Powers' in the country. This growing political power of the Company led the Government of Britain to pass measures designed to regulate and control its political activities, the first of which was the Regulating Act of 1773. These measures determined the character of the political and administrative system that grew up in India during the Company's regime and after its termination.

**The Change Wrought in the Character of the Company.—** Fully to appreciate the radical change which the Company underwent as a result of the political intrigue and strife into which it entered in the eighteenth century we must remember the fact that in its inception it was a purely trading concern. The limited powers of making laws for the proper conduct of its affairs and imposing such penalties and punishments on its servants as might be necessary for their enforcement granted to it by the Charter of 1600 were such as were recognised appropriate for municipal and commercial corporate bodies at that time. The Royal Charters of 1661, 1683, 1726, and 1755 gradually conferred on it larger political powers, originally for defensive purposes and to enable it to exercise effective control

over its servants, and later on when it acquired territories in India, to enable it to govern its possessions. In other words, from a mercantile association the Company became a political power governing an area almost as large as the British Isles. If with the acquisition of political power it had given up its commercial activities, the results would not have been disastrous. But it retained both the aspects; it became a trading-cum-political body, exercising irresponsible authority over the areas where it enjoyed Dewani rights. Before describing the evil consequences of this union of commercial and political powers in one and the same group of persons, we may briefly state the political powers granted to the Company by the Charters of 1661, 1669, 1683, and 1758.

The Charter of 1661 authorised the Company to appoint governors and other officers for the government of fortresses, to despatch ammunition and war material for the defence of their factories, to erect forts, and to appoint officers with power to make peace and war with non-Christian nations. The Charter of 1669 gave the Company civil and military powers over the island of Bombay which the King had received from the Portugese and passed on to the Company. The Charter of 1683 conferred on the Company full powers to raise military forces, to exercise martial law in case of foreign invasion or domestic insurrection, and to make peace or war with heathen nations. The Charter of 1686 empowered the Company to raise naval forces, to appoint admirals and other sea officers, and to coin in their forts species of money coined by the Indian Powers. In 1687 James II empowered the Company to establish a municipality at Madras. The Charters of 1726 and 1753 reorganised the municipal and judicial institutions at Bombay, Madras and Calcutta. The Charter of 1758 empowered the Company to cede, restore, or dispose of fortresses, districts or territories acquired by conquest from Indian princes or governments. The grant of the rights of coining money and creating municipal institutions is highly significant; it marks the development of the territorial character of Company's rule and indicates the readiness of the Crown to give the fullest power to the Company. It shows that the British Government had accepted the policy of acquiring political sovereignty in India; but it did not interfere with the Company's management of its affairs.

### The Working of Dual or Double Government in Bengal.—

The one event which put great political power in the hands of the Company and which initiated the era of misrule in Bengal was the establishment of what is known as the *Dual or Double Government*. Though it was introduced by Clive in February 1765 as a result of the arrangements made with the Nawab who had been put on the throne, it was completed by the grant of the Diwani in August of the same year by Emperor Shah Alam to the Company. The conferment of the Diwani meant the placing in the hands of the Company the entire civil government of the province with control over its financial administration including the collection of land revenue and customs. The British had already acquired control over the armed forces.

If Clive had assumed responsibility for the collection of the land revenue and customs through the servants of the Company, the consequences might not have been so disastrous as they turned out to be. But while accepting the Diwani he left the actual administration of it in the hands of the four deputies of the Nawab, known as Naib Diwans. But in as much as the Naib Diwans were the virtual nominees of the Company, it amounted to nothing more than adopting the Nawab's name as a veil over the Company's power. The Directors suspected that the Naib Diwans were misappropriating a large part of the money they collected from the people, and therefore deputed Hastings to India with the purpose of ending this system. Its greatest evil was the divorce between power and responsibility. The servants of the Company were the virtual masters of Bengal and other territories but they were not responsible for their government.

"Though it was they and their Indian agents rather than the puppets on the throne who were in fact obeyed, they still regarded themselves as traders only ; and since they had always been tacitly allowed to implement their nominal salaries in their own account, some of them used their power to enrich themselves without any sense of duty towards the Indian people which possession of that power implied.\*"

Clive must have been aware of the evils inherent in the system ; perhaps they did not count for so much in those days as they do now. He preferred this arrangement which concealed the reality of the political power of the Company behind the nominal

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\* Coupland : *India, A Restatement*, page 42.

authority of the Nawab as the Viceroy of the Mughal Emperor because it enabled him to 'secure the full control of Bengal affairs in the interests of the Company without incurring the inconvenience of formal and avowed dominion.'\* He did not want to increase the jealousy of the French; and above all, he wanted to avoid the appearance of large territorial gains because of the opposition of the British authorities and the critics of the Company in England. The final instructions which Clive sent to the Calcutta Council on January 16, 1767, reveal his inner motive and purpose. In them he

'insisted that, while the Nawab was but a name and a shadow, policy required that he should be venerated and encouraged to show resentment at any lack of respect by foreign nations. His office should be used to repel any foreign efforts at control, and genuine grievances should be adjusted through him. While the revenue belonged to the Company, the territorial jurisdiction must be exercised through the chiefs of the country acting under him and the presidency in conjunction.'†

While the servants of the Company amassed huge fortunes at the cost of the people of the land, the Directors in England also pressed for more and more money for raising the dividend from 6 to 10% in 1766 and to 12½% in 1767, and also for paying a sum of £ 400,000 a year for two years to the British Government in return for which the Company would be allowed to retain its territorial acquisitions and revenues for that period. Beside these demands it had to maintain its army and pay subsidies to the Emperor in return for the Dewani and to other Indian chiefs. To meet all these demands heavy taxes were imposed and forcibly collected, resulting in unprecedented misery of the people. The consequences of the British policy and methods may better be described in the following words of Gorham D. Sanderson. On page 102 of his '*India and British Imperialism*' he writes :

'British imperialism exhibited its true colors when engaged in the collection of revenue in a conquered district. Let us follow British imperialism to Bengal. The province of Bengal, until the advent of the British, was undoubtedly the richest land in the world. It was a veritable Garden of Eden inhabited by millions of well-fed, well-housed, well-clothed, and well governed people, who for thousands of happy years had been as bees gathering in abundant honey from field and farm, from commerce and industry. No famine was ever recorded by history to have entered the rich and populous area. For millenia, Bengal had been

\* *Cambridge History of India*, Vol. V, page 177.

† Keith : *Constitutional History of India*, pages 54-5.

famous for its continuous and abundant prosperity. British imperialism needed only thirteen years to bring destruction, destitution, death and imperial famine to the province of Bengal. The amount of food taken from the lands of rich Bengal by the land revenue system may be judged by the fact that in little over a decade such land taxes brought about the ruination of Bengal.'

In 1770 the first famine occurred in Bengal in which about one third of the inhabitants died of starvation in Purneah. The misery of the people was almost equal in other parts. The pressure of the land revenue on the people of Bengal may be gathered from the figures mentioned by Romesh Chandra Dutt in *The Economic History of India under Early British Rule*. Therein he says that while the Muslim rulers of Bengal collected a total of £ 817,533 a year, the East India Company was collecting a grand total of £ 2,680,000, after nearly thirty years.

**Agitation for Parliamentary Intervention.**— The period from 1600 to the passing of the Regulating Act of 1773 is known as the Period of Royal Charters. The Charter of 1600 which gave the Company the exclusive right to trade in the East was issued by Queen Elizabeth; the subsequent Charters which renewed the right from time to time and gave the Company right to acquire territories, raise military forces, appoint governors, coin money, and make peace or war with non-Christian nations were also granted by the British monarchs. All of them were *royal charters*; Parliament did not intervene in the matters of the East India Company. Parliamentary intervention commenced in 1694 when the House of Commons passed a resolution that all British subjects had equal right to trade with the East Indies unless prohibited by an Act of Parliament. From 1698 the trade monopoly of the Company was secured by Acts of Parliament and not by Royal Charters in return for loans given to the state from time to time. But Parliamentary intervention became active only after 1765. The first great Act passed by Parliament which asserted its right to determine the form of government for territories considered to be the private possessions of the Company was the Regulating Act of 1773. It is interesting to study the causes which led to the demand that Parliament should actively intervene and reorganise the system of government established by the Company in India.

The most important of these causes was the jealousy caused by the immense political powers which the Company had acquired by

the grant of Diwani in 1765. It was alleged that the Company was creating a state within the state and that it was high time for the British Government to assert its authority over British subjects in India. The second was the flutter caused by the return to England of the Company's servants who, though 'still in the prime of life, yet very weathy', proceeded to 'buy their way into society and even into Parliament'.\* These persons were called Nabobs. It was alleged that they had amassed huge fortunes by unscrupulous methods, and that an enquiry be made into the conduct of the agents of the Company and their misdeeds and crimes punished. It was also alleged that the Company had entered into wars and shamefully conducted them to satisfy the avarice and whims of highly placed individuals. The result was that in 1766 the House of Commons appointed a Committee to report on the affairs of the Company, and in the following year Parliament passed no less than five Acts in regard to Indian affairs. The third factor was the reaction produced in England by reports of the Company's misrule and the resulting misery of the people. We have already quoted a long passage from Sanderson describing the evil effects of British imperialism in Bengal. Here we may quote a passage from Lecky, a British writer. He writes: 'Whole districts which had been populous and flourishing were at last utterly depopulated, and it was noticed that on the appearance of a party of English merchants the villages were at once deserted and the shops shut, and the roads thronged with panick-stricken fugitives.'† Such a state of affairs made the thinking section of the British public question the legitimacy of a private trading company exercising political authority. The suggestion was made that the Crown itself should take possession of the territories acquired by the Company in India and undertake the functions of the Diwani. Even the mercantile section began to say that bad government was fatal to good trade and that good government in India was the most desirable thing, particularly in view of the loss of the American colonies.

It may also be pointed out that, on the one side, the income of the Company began to dwindle on account of the selfishness and rapacity of its servants, and on the other side, its expenses mounted

\* Coupland : *op. cit.*, page 42.

† Quoted by G. N. Singh, *Landmarks in Indian Constitutional and National Development*, page 13.

up on account of the wars into which it had to engage, sometimes just to satisfy the avarice and whims of some important individuals. The result was a steep decline in the dividends of the shareholders of the Company. They were not averse to Parliamentary intervention in Indian affairs.

Finally mention may be made of the appalling famine of 1770 which devastated Bengal. It is estimated that in it 'at least a fifth of the population of Bengal, then perhaps fifteen millions, perished while some of the Company's servants profiteered in necessities and the principal deputy added 10 per cent to the assessments to make good at the expense of the living the losses involved in the wholesale depopulation.'\*

Summing up, we may say that the setting up of Double Government in Bengal and the grant of Dewani in 1765 gave rise to a corrupt system of government in which the exercise of political power was divorced from responsibility for the welfare of the people. There was serious misrule under which the people suffered greatly from the selfishness and rapacity of the servants of the Company. It was suggested that the best way to improve the administration and relieve the misery of the people was for the Crown to assume full sovereignty for the good government of the territorial possessions of the Company in India and convert its servants into a civil service of the Crown. This step was not deemed feasible for various reasons. Not only would it have been too great and drastic a change ; it would have also raised delicate legal and political problems and was opposed to the eighteenth century notions about the sacredness of property. A private corporation like the East India Company could have functioned as the Diwan of the Mugal Emperor ; it was impossible for the British Crown to assume that position. So the only other alternative was for the Crown to assume the position of a controlling and dominating partner in matters relating to the higher branches of government, and leave to the Company the monopoly of the trade, the disposal of the great patronage it had, and the details of administration. In other words, the situation would have been met by the extension of parliamentary control over the political activities of the Company, leaving it free in matters of trade. This step was in accord with current constitutional laws and practices.

\* Keith : *Constitutional History of India*, page 58.

The opportunity for Parliament to bring the political activities of the country under its control and dictate to it the system of government it should have for its possessions in India soon presented itself when the Company made a request to the state to come to its aid by giving a loan. This request, made in August, 1772, showed that there was no justification whatsoever for the dividend of 12 $\frac{1}{2}$  percent declared in the preceding March. Parliament decided to appoint a secret committee to enquire into the Company's affairs and report. The Committee made a searching and minute enquiry and submitted its report in May, 1773, which led to the passing of the famous Regulating Act of 1773. It may also be added that an immediate result of the Committee's report was the passing of a bill by Parliament which restrained, for a limited period only, the Directors of the Company from sending commissioners to India for superintending and regulating its affairs there. This was done to prevent the Company from pushing forward with its efforts to reform its administration which might have weakened the case for parliamentary intervention.

With this as an account of the background against which the Regulating Act of 1773 was passed, we may proceed to study its provisions and assess its constitutional importance in the next chapter.

## CHAPTER II

### RULE OF THE EAST INDIA COMPANY

#### THE PERIOD OF PARLIAMENTARY CONTROL (1773-1858)

**Introductory.**— We saw in the last chapter that for a long time Parliament did not concern itself with the affairs of the Company in India. The Company's settlers were responsible only to the Directors who derived their powers of control from Charters granted to them by the Crown. The situation created by the establishment of Dual Government in Bengal in 1765, in which the agents of the Company had to handle the revenues of a big province in the name of an emperor, the tales of the miseries of the people wrought by a corrupt and rapacious government which reached England, and the general unpopularity, opulence, and arrogance of Company's servants returning from India gave rise to the demand that Parliament should actively intervene in Indian affairs. The result of the agitation led by Colonel Burgoyne in the House of Commons was the appointment of a secret committee in 1772 to look into and examine the affairs of the Company in India. This marks the beginning of a new era in which the Indian affairs increasingly became the concern of Parliament. The first fourteen years of this period, from 1772 to 1786, 'witnesses all the great statutes which definitely subjected the Company to the control of the Crown and parliament, and converted it into a quasi-state department.'\* The changes introduced between 1786 and 1858 (the year in which the Crown assumed responsibility for the administration of Indian affairs) were not so fundamental as those made between 1772 and 1786.

#### A. THE REGULATING ACT, 1773

**Main Provisions of the Act.**— The beginnings of parliamentary control over Indian affairs are to be found in the famous Regulating Act of 1773. It was introduced by Lord North on May 18, passed by the House of Commons on June 10, and by the House of Lords on June 19, 1773. Though it did not afford a

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\* Cambridge History of India, Vol. V, page 180.

complete redress of the evils in the system of government established by the Company in India, it was an important step in that direction. It is important as the first of a long series of Acts which shaped and moulded the structure of the Government of India from time to time. It did *three* things. (i) It changed the structure of the Company in England, and also altered the structure of the government of the Company in India. (ii) It brought the presidencies of Bombay and Madras to some extent under the control of the Governor-General of Bengal and thereby subjected the whole of the Company's territories to one supreme control in India. (iii) It also provided for the supervision of the Company by the ministry, though in a very inefficient manner. Let us see how these things were effected.

Before the Regulating Act the affairs of the Company were controlled by the Court of Directors containing 24 members elected annually by the Court of Proprietors. Owners of stock worth at least £ 500 for six months preceding the date of election had the right to elect the Directors. The Regulating Act laid down that the Directors were to be elected for a four year term, one-fourth of them retiring every year. The outgoing directors were ineligible for re-election for one year only. No person who had been employed in India or the Far East could be elected as a Director unless he had returned and resided in England for at least two years. A proprietor who held £ 1000 worth of stock and had held it for at least one year was given one vote in the Court of Proprietors; those who held £ 3000 worth of stock two votes; those having £ 6000 worth of stock three votes, and those with £ 10000 worth of stock were to have four votes. These measures resulted in depriving 1246 small proprietors of their right to vote. They however failed to improve the quality of the Board of Proprietors, and to prevent power from being purchased by the servants of the Company returning with spoils of the East.

The Act of 1773 overhauled the structure of the Company's government in India. Prior to its enactment the possessions of the Company in India were grouped into the three presidencies of Fort William (Bengal), Bombay and Madras. Each one of them was separate from and independent of the other. Each presidency had its own governor (generally known as president) and a council of senior merchants usually containing from 12 to 16 members. The

council of Calcutta contained 16 members, but Clive replaced it by an advisory body of four persons. The governor of each presidency had direct dealings with the Court of Directors in England which was the supreme governing authority. The governor of neither presidency had any sort of supremacy over the other governors. The Regulating Act changed all this. It appointed a Governor General and four Councillors for the government of the presidency of Fort William who were to hold office for five years and could not be removed from office before the expiry of the term except by the King on a representation made by the Court of Directors. The Act named Warren Hastings as the Governor General of Bengal and appointed Clavering, Monson, Barwell and Francis as the four Councillors. The Act vested in the Governor General and the four Councillors not only the civil and military government of Bengal but also the power of superintending and controlling the governments of Bombay and Madras (and also that of Bencoolen in Sumatra) in matters of declaring war and making peace and concluding treaties with Indian powers. Notwithstanding the fact that the presidencies of Bombay and Madras were left largely independent in other matters, and the fact that the Act gave to the Governor in Council of each of them the power to declare hostilities and conclude peace without the consent of the Governor General and his Council in cases of imminent necessity or where they had received special orders from the Court of Directors, the Act of 1773 can be said to have laid the foundations of the unitary type of government for this vast country. The Governors-in-Council of the two presidencies were required to pay due obedience to the orders of the Governor General-in-Council of Bengal and to submit to that authority all information in their possession concerning the government, revenues, or interests of the Company. The Governor General of Bengal-in-Council was given the power to suspend any offending Governor and his Council. In short, the Governor General of Bengal and his Council became the supreme authority in India. They were authorised to make and issue rules, ordinances, and regulations for the good order and civil government of the Company's settlements at Fort William and other factories at other places. It may be mentioned that it was the Act of 1935 which provided for the establishment of the federal system of government in India for the

first time; the unitary system introduced by the Regulating Act continued until the Act of 1935 came into force and the provinces of British India became autonomous.

The Regulating Act also provided for the regulation of the relations of the Governor-General and his Council to the Court of Directors, and of the latter to the Crown. The Governor General and his Council were to obey the orders of the Court of Directors and keep them constantly informed of all matters relating to the interests of the Company. The Directors were to transmit, within fourteen days after receiving letters and advices from the Governor General and his Council, to the Treasury copies of all parts relating to the management of the Company's revenues, and to transmit to a secretary of state copies of all parts relating to the civil or military affairs of the Company. In this way an attempt was made to subject the Company to the supervision of the Government in England, though only in a tentative and inefficient manner.

Since in its report the secret committee (appointed in 1772) had pointed out the undesirable character of the existing system of judicial administration in India, the Regulating Act contained provisions for making important changes in the administration of justice in Bengal. It provided for the establishment of a supreme court of justice at Fort William consisting of a chief justice and three other judges who were to be barristers of at least five years' standing. They were to be appointed by the Crown and were to hold office during the King's pleasure. They were thus independent of the Company and could punish its servants without fear of consequences and adjudicate on claims against it. The Supreme Court was vested with civil, criminal, admiralty and ecclesiastical jurisdiction and was authorised to establish rules of practice and procedure necessary for the administration of justice. It could also appoint clerks and other ministerial officers. Its jurisdiction extended to all British subjects residing in the province of Bengal, Bihar and Orissa. It had 'full power and authority to hear and determine all complaints against any of His Majesty's subjects for crimes, misdemeanours, or oppressions, and also to entertain, hear and determine any suit or action whatsoever against any of His Majesty's subjects in Bengal, Bihar and Orissa, and any suit, action or complaint against any person employed by or in the service of the

Company or of any of His Majesty's subjects.' The only limitation imposed upon its jurisdiction was that it could not hear or determine any indictment against the Governor General or any of his Councillors for any offence except treason and felony. The Governor General and his Councillors were not liable to be arrested or imprisoned for any action or proceeding by any order of the Court. Appeals against the judgments of the Court were to lie to the King-in-Council in England. The Court was to try cases by jury. It was to be a court of record and of Equity.

With a view to eradicating corruption and the flagrant malpractices of the past, the Regulating Act provided that the Governor General, members of his Council, and judges of the Supreme Court were not to receive presents or engage in trade. No person holding any civil or military post in the Company was to receive and accept, directly or indirectly, any gift, reward or present from any native prince or power. Persons violating this provision were liable to pay double the amount, and could be removed from India. No officers engaged in revenue collection was to engage in trade or any of the state monopolies. No subject of His Majesty was to lend money at more than 12% interest. In order to remove the temptation to accept presents or rewards the Governor General was to receive £ 25,000 annually, a member of his Council £ 10,000, the chief justice £ 8,000, and a judge £ 6,000.

It remains to mention one very important provision of the Regulating Act. No rules, ordinances, and regulations made by the Governor General and his Council for the good order and civil government of Fort William and the subordinate factories could be valid and have effect until registered in the Supreme Court and approved by it. Copies of them were to be sent to England and there exhibited at the India House and to be communicated to a secretary of state. The King-in-Council could cancel any on a representation being made to him.

It may be added that Parliament sanctioned the loan for which the company had applied.

**Defects of the Act.—** The objects to realise which the Regulating Act was passed were indeed good and praiseworthy; they were not, however, realised to any large extent. There were several reasons for the failure. Firstly, it is alleged in certain quarters that

parliamentary intervention in Indian affairs was motivated more by financial and political considerations than by the desire to secure good government for the people living in the Indian territories acquired by the Company. Secondly, even if we credit the British statesmen with the intention of improving the lot of Indians, they did not possess adequate information about relevant facts and could not get expert advice as to the best way in which to proceed. Thirdly, Lord North, who was mainly responsible for the Act, was not the man to take any strong and decisive measures. 'Habitual indolence, coupled with the desire to let "sleeping dogs lie" led him to leave the *status quo* as much undisturbed as possible.\* The machinery he set up for the constant inspection of Parliament over the Company proved inefficient. Lastly, there were many defects in the Act which are briefly described below.

Its most important defect was that the reforms it sought to introduce were confined mostly to the organisation of the Company in England; enough attention was not paid to the needs of the people of Bengal. Lord North held the view that the sufferings of the people of India proceeded not so much from a lack of political freedom as from 'a want of government of Europeans, the servants of the Company, and those who are protected by the servants of the Company'. He therefore proceeded to remove this want and thought that the best way of doing so was to abolish the dual government in Bengal, and place the entire responsibility for the good government of the people in the Governor General and his Council, and establish a Supreme Court to protect the people against the illegal highhandedness of the executive. But this attempt of Lord North was foredoomed to failure, because by creating 'a governor general who was powerless before his council, and an executive that was powerless before a supreme court, itself immune from all responsibility for the peace and welfare of the country' it violated the first principles of administrative mechanics.†

By requiring that all the decisions of the Governor General-in-Council required a majority vote and by refusing to arm the Governor General with the power of over-riding his Council it made him weak as against his own Council. This provision, though in

\* Banerjee : *Indian Constitutional Documents*, Vol. I, Introduction, page xxi.

† *Report on Constitutional Reforms*, page 17.

accord with the practice existing in the presidencies of Fort William, Madras and Bombay at that time, differed from that found in the colonies where the governor was only advised by the council but not controlled by it. Of the four Councillors named in the Act three, namely, Clavering, Monson and Francis, persistently opposed Hastings who was supported only by Barwell. Barwell in one of his letters to Lawrence Sullivan remarked that his other three colleagues in the Council from the very beginning embarked upon 'a predetermined, pre-concerted system of opposition to the Governor General', who was 'steadily outvoted and overruled' so much so that for 'all practical purposes he had ceased to be the Governor General'. Warren Hastings himself pathetically wrote: 'My situation is truly painful and mortifying, deprived of the powers with which I have been invested by a solemn act of the Legislature,..... denied the respect which is due to my station and character,..... and condemned to bear my share in the responsibility of measures of which I do not approve.....'\* He felt so much depressed that in 1776 he gave his agents in England a conditional authority to tender his resignation. The resignation was tendered and even accepted. But before his successor could be appointed, Monson, the chief opponent of the Governor General in the Council, died. Thereafter, Hastings could maintain his supremacy in the Council by means of his casting vote. He withdrew the resignation. Clavering also died in 1777, and after that the position of Hastings improved a good deal. It is clear that the rule making it obligatory for the Governor General to act according to the decisions of the majority in the Council was a great mistake. It was not removed till Lord Cornwallis made its rectification a condition precedent to his acceptance of the office of Governor General.

The second great defect of the Act was that its provisions in regard to (i) the nature and authority exercisable by the Governor General and his Council, (ii) the jurisdiction of the Supreme Court, and (iii) the relation between the Bengal Government and the Court were obscure and defective. The ambiguities of the Act were perhaps due to the difficult situation created by the grant of Diwani. The territories of Bengal had not been definitely annexed by the Company; the authority of the Emperor at Delhi and his viceroy

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\* Quoted by Bannerjee, *op. cit.*, page xxiii.

was recognised. The attributes of sovereignty were divided between these two and the Company in such a way that whilst the substance had passed to the latter, the shadow remained with the former.

'But it was a shadow with which potent conjuring tricks could be performed. Whenever the Company found it convenient, they could play off the authority derived from the Mughal against the authority derived from the British law, and justify under the one proceedings which it would have been difficult to justify under the other. In the one capacity the Company was the all powerful agent of an irresponsible despot; in the other it was tied and bound by the provisions of Charters and Acts of Parliament. It was natural that the Company's servants should prefer to act in the former capacity. It was also natural that their oriental principles of government should be regarded with dislike and suspicion by English statesmen, and should be found unintelligible and unworkable by English lawyers steeped in the traditions of Westminster Hall.\*'

The Regulating Act created two authorities, each supreme in its own sphere, but left the question of their relation to one another unsettled. The Governor General and his Council were given supreme authority in administrative and military matters, and the Court was made supreme in the sphere of judicial administration. With the noble and laudable motive of safeguarding the people of Bengal from oppressive rules and regulations the Act laid down that the rules, ordinances and regulations framed by the Governor General and his Council could not become effective until they were registered with the Supreme Court and approved by it. It however failed to realise that any attempt on the part of the Court to extend its controlling power over the executive would result in sapping the foundations of civil authority. It was a grave defect of the Act that it placed complete control over legislation in the hands of the judges of the Supreme Court who had no responsibilities of government and were also ignorant of the habits and ways of life of the people. Moreover, the Regulating Act did not specify either the law which the Supreme Court was to administer, or the persons to whom it was to be applied. There was no precise definition of the phrase 'British subjects'. Was the Court to apply local law or the English law? Did all the inhabitants of Calcutta come within its jurisdiction or only the Englishmen living there? The Chief Justice and the other three judges appointed by the King were all Englishmen wholly ignorant of either Hindu or Muslim law as well as of the customs

\* Ilbert: *Government of India, Historical Survey*, page 52.

and traditions of the people. They naturally refused to administer the personal laws of the people of Bengal and insisted on applying the English law to the great dissatisfaction of the people who did not understand its principles and the difference between law and equity. In the next place, the question arose whether the Court could proceed against the judicial officers of the Company for acts done in the execution of what they believed to be their legal duty. The problem arose because the Supreme Court refused to recognise the judicial authority of the moffusil courts of Zamindars. In this connection it may be pointed out that while putting an end to the vicious system of Dual government established by Clive in 1765, Warren Hastings had reorganised the system of judicial administration. He created one Diwani Adalat and one Faujdari Adalat at the headquarters of each district from which appeals lay to the Sadar Diwani and Sadar Nizamat Adalat. The panchayats, the system of arbitration and the courts of the Zamindars were kept. The refusal of the Supreme Court to recognise these old courts created a serious problem. Hastings tried to solve it by appointing Chief Justice Impey as the president of the Sadar Diwani Adalat, thus vesting in him appellate and revisional control over the country courts. It was however unsatisfactory in so far as it compromised the independence of the Chief Justice by making him draw salary from the Company whose agents he was required to control by the Regulating Act.

There was another unsettled matter also which led to a sharp controversy between the Supreme Court and the Governor General and his Council. The former claimed jurisdiction in revenue matters which was hotly denied by the latter. The Supreme Court based its claim on the ground that its jurisdiction extended to all British subjects and to such persons as were employed by the Company. It was contended that the revenue officials were the servants of the Company and therefore came within the jurisdiction of the Court. To this the Governor General and his Council replied that the revenue officials owed allegiance to the Emperor and therefore did not come within the category of the Company's servants. The point was ticklish ; it was no easy matter to define what constituted employment under the Company.

Lastly, we may say that the attempt made by the Act to create a supreme authority for the Company's territories in India was half-

hearted ; the control over the Presidencies of Bombay and Madras invested in the Governor General of Bengal was imperfect. Not only was it unduly restricted to matters of peace and war and negotiations with the Indian chiefs, but in this field also it was incomplete. Enough latitude was given to the subordinate presidencies to disregard the orders of the Governor General.

In the end, it may be observed that even those provisions of the Regulating Act which were designed with a view to reforming and improving the constitution of the Company 'at home' did not succeed in achieving their object. It was observed by the authors of the Ninth Report of the Select Committee appointed in 1781 that the two principles on which regulations concerning the Court of Proprietors were based were fallacious. Smaller numbers are not always a security against faction and disorder ; nor does integrity of conduct necessarily follow upon greater property. The raising of the qualification of voters to the possession of stock worth £ 1,000 simply penalised the small proprietors who could not split votes and rewarded those who could. The scheme of the partial renewal of the Court of Directors every year did not work at all ; the six retiring Directors were re-elected the following year. The effect of the Regulating Act was, in the words of Kaye, 'to constitute a body of thirty directors of whom six, forming a sort of non-effective list, go out every year by rotation.'

Enough has been said about the difficulties which came to light as a result of the working of the Regulating Act for some years. In 1781 Parliament held an enquiry into the administration of justice in the Presidency of Bengal whose result was the passing of the Amending Act the same year. Before we look at the main provisions of the Amending Act, we may just refer to those features of the Regulating Act which give it great constitutional importance.

**The Constitutional Importance of the Act.**— Whatever the shortcomings and obscurities of the Regulating Act of 1773 may be, there is no doubt that it is a landmark in the constitutional development of India. It marks the beginning of the era of parliamentary control over the Company's affairs in India. As has been pointed out before, it is the *first* of the series of Acts which ended by making the Company into something like a quasi-state department. Secondly, it is also the *first* of the long series of Acts which shaped and

moulded the structure of the Government of India from time to time. Thirdly, by designating the Governor of Bengal as the Governor General and requiring that the Governors of Bombay and Madras should obey his instructions in matters of peace and war and negotiating treaties with Indian princes it made an amateurish attempt at setting up one supreme authority for the whole of the Company's territories in India, and thereby laid the foundations of the unitary system in the country. In the last place, it gave to India the collegiate type of executive in place of the vague and arbitrary rulership that had devolved upon the Company. The Act was a bold attempt at securing good government for the Company's territories in India.

### B. THE AMENDING ACT OF 1781

As its name, The Bengal Judicature Act, suggests it was designed to define the powers of the Supreme Court and settle some of the questions arising out of the Act of 1773, pertaining to its jurisdiction and its relationship with the Governor General and his Council. It provided that the Supreme Court had no jurisdiction in matters concerning revenue, or concerning any act done in the collection thereof according to the usage and practice of the country or according to the regulations of the Governor General and his Council. It also laid down that no person became subject to the jurisdiction of the Court simply because of his being a landowner, landholder, or farmer of land or land rent, or receiving a payment or pension in lieu of any title to land or land rent, or receiving money for collecting rents payable to the government. This meant that the Supreme Court was denied jurisdiction over persons engaged in the collection of land revenue. The Act also excluded from the jurisdiction of the Court the Governor General and his Council, both individually and collectively, for anything counselled, ordered or done by them in their public capacity. An order issued by them could be pleaded in justification of his act by a subordinate official. The Act also exempted the judicial officials of the country courts for acts done by them in their judicial capacity. This means that in almost all the points of dispute between the Supreme Court and the Governor General and his Council the Amending Act of 1781 upheld the point of view of the latter. It greatly strengthened the position of the executive *vis-a-vis* the Supreme Court.

The Act also settled the jurisdiction of the Supreme Court. It had jurisdiction over *all* the inhabitants of Calcutta 'in all manners of actions and suits'. Questions of inheritance and succession to lands, rents and goods and matters of contract were to be settled according to Muslim law and usage if the parties to the suit were Muslims, and according to Hindu law and usage if they were Hindus. If the two parties belonged to different faiths, the personal laws of the defendant were to be applied. The servants of the Company and the Britishers in India were subject to the jurisdiction of the Court only in actions for wrongs or trespass or civil cases by agreement of parties. They were not subject to its jurisdiction in regard to matters of inheritance or succession to land or goods.

The Act recognised the appellate jurisdiction of the Governor General and his Council in country cases, and confirmed it in cautious terms.

In the end we may draw attention to another provision of the Act which was of great importance in the history of legislation in India. It empowered the Governor General and his Council to frame regulations for the councils and the courts. Copies of these regulations were to be sent to the Court of Directors and one of the secretaries of state. They could be disallowed by the King in Council within two years. It was nowhere provided that they were to be registered with the Supreme Court and required its approval before becoming effective. The regulations made by Warren Hastings for the administration of justice in 1772 were issued with some additions, and were consolidated in the form of a code in 1781. They were not registered with the Supreme Court or confirmed by it. Nevertheless, their validity was upheld by the Act of 1781. Thereafter the Governor General and his Council preferred to act under the powers conferred by the Act of 1781 which did not require reference to the Supreme Court.

By another Act passed in 1781 the East India Company was required to pay to the British Government a sum of £ 400,000 in discharge of all claims to a share in its territorial revenues upto March 1 in that year. In return, its privileges were extended 'until three years notice after March 1, 1791'. The Company was made to pay a sum of Rs. 2 lacs of rupees to the Government every year

for every regiment of 1000 men despatched to India at the desire of the Company.

Before concluding our account of the Amending Act of 1781 we may refer to one curious fact. The Act of 1773 had fixed the term of office of the Governor General and members of his Council at five years. In the ordinary course the term of Warren Hastings should have terminated in 1779. He however continued in office. The dangerous situation in America came to his help. In 1779 and 1780 Acts were passed extending the privileges of the Company for one year and to continue the Governor General and his Council in office. The Act of 1781, as we have already seen, continued the privileges of the Company indefinitely, which could be terminated on three years notice after the 1st of March, 1791. Warren Hastings also continued as Governor General.

#### C. PITT'S INDIA ACT : 1784.

**Circumstances leading to the Act.**—The next landmark in the growth of Indian constitution is the famous Pitt's India Act of 1784. For a proper appreciation of its provisions some knowledge of the circumstances under which it found its place on the statute book is indispensable.

The agitation for an effective control over the Company's Indian affairs continued even after the passing of the Amending Act of 1781. The Parliamentary Committee whose report was made the basis of the Amending Act continued its work and submitted several reports. Besides it, there was another Committee also which sat in secret and inquired into the causes of the war in Carnatic. The reports of both these committees were highly critical of the system of administration in India, and of the persons responsible for it. A resolution was passed by the House of Commons demanding the recall of Warren Hastings and Impey. But the Court of Proprietors persisted in retaining their services. This shows the very inadequate degree of control of the Ministry and Parliament over the Company and its administration. Meanwhile the Government of Lord North had been driven out of office and a coalition ministry under Fox and North had come into existence. Dundas, who was now in the opposition, introduced a bill empowering the King to recall the principal servants of the Company and investing the Governor

General with almost absolute powers. This made it necessary for the Government to take up the question.

Fox, who described the conditions of the Company in India as 'critical beyond description', and its government as 'a government of anarchy and confusion', introduced his famous Bill on November 18, 1783. His aim was simple ; it was to deprive the East India Company of its right to administer Indian territories. The means recommended by him to achieve it was straightforward. He proposed to replace the Court of Directors and the Court of Proprietors by a new body consisting of seven Commissioners. They were to be named in the Act, and were to hold office for four years. They could be removed only by the King on an address presented by either House of Parliament. Vacancies in the body were to be filled by the King. Had this Bill become law, the Company would have been brought completely under the control of the British Government and its vast patronage taken away from it. A British historian has described it as 'a sincere and statesmanlike effort to deal with a great problem on comprehensive lines'. But the unpopularity of the Fox-North coalition ministry and the tactlessness of Fox ruined it. Instead of taking the Company into confidence Fox offended it by calling it bankrupt and saying that it had forfeited the right to administer the affairs of India by misgoverning Bengal. Moreover, he did not take care to choose the seven Commissioners from amongst all the parties in Parliament, but appointed them from amongst his own supporters. The King was also opposed to the Bill. So, though passed by the House of Commons, it was defeated in the House of Lords. Its defeat meant the resignation of the Fox-North ministry and the setting up of a new ministry headed by Pitt the Younger.

Pitt had vehemently opposed Fox's Bill while he was in opposition. But he too could not allow the state of affairs to continue unchecked. He therefore introduced his own Bill in Parliament designed to place the Company in 'direct and perpetual subordination' to Government, but without seeking to alter its constitution radically and without transferring patronage to the Crown in a wholesale manner. He tried to steer clear of the proposals of Fox which had given offence to the Company. The Bill was introduced in January, 1784. Its contemptuous treatment by the Opposition which had still a large majority in the House of Commons, forced Pitt

to secure the dissolution of the House and appeal to the country. The results of the general election were most favourable to him. He was sent back with a triumphant majority. He re-introduced the bill with slight modifications which was passed in August. We may now describe its main provisions.

**Main Provisions of Pitt's India Act.**— Pitt's India Act was a skilfully drafted measure ; in the words of Burke it was 'as able and skilful a performance for its own purposes, as ever issued from the wit of man.' Its great merit lay in the fact that, while subjecting the East India Company to the direct and perpetual control of the British Government, it avoided those features of Fox's Bill which had given great offence to the Company and brought about its defeat. It did not transfer patronage to the Crown and did not radically alter the constitution of the Company. Pitt had profited both by the experience gained by the working of the Regulating Act and by the criticisms directed against Fox's India Bill. He therefore framed his Bill in such a way as to secure a vigorous control over the Company's affairs without robbing it of its rights, and to change its system of government without 'entrenching on the chartered rights of man'.

Pitt brought the Company under the direct control of the Government by setting up a Board of six Commissioners, usually known as the Board of Control. It was to consist of the Chancellor of the Exchequer, one of the principal Secretaries of State, and four members of the Privy Council. The Commissioners were to be appointed by the King and to hold office during his pleasure. It would be observed that this Board of Control was not an independent executive body like the one proposed in Fox's Bill, but was linked up with the government of the day. Two of its most important members, the Chancellor of the Exchequer and one of the Secretaries of State, were to change with each ministry. Further, the Board had no patronage ; it did not appoint or dismiss the Company's servants in India. But otherwise it was in a position to exercise as extensive a supervision over the affairs of the Company as Fox's Commissioners. The Board of Control was empowered 'to superintend, direct and control all acts, operations and concerns which in any wise relate to the civil or military government or revenues of the British possessions in the East Indies.' It also had access to all the papers,

minutes, correspondence, etc., of the Company. The Court of Directors was bound to give the Board of Control all the information which the latter might require. To meet this requirement the Directors asked their servants in India to send two copies of every despatch, one of which was immediately sent to the Board of Control. The Board could ask for any other paper it needed, and issue any instructions it thought fit. In short, the Board had full power to keep itself fully informed about Indian affairs and correct all mistakes of omission or commission the Directors might make. Every order proposed to be sent out to India required the concurrence of the Board which had the right to modify it and to substitute an entirely new order of its own in its place. Ordinarily the Board of Control issued orders and instructions to and through the Court of Directors; but it was given the right and power to communicate them direct to a Committee of Secrecy of three persons established by the Act which was to send them to the officers of the Company in India without disclosing their contents to the Court of Directors. The Directors were required by the Act to pay obedience to and be bound by such orders and instructions as they might receive from time to time from the Board of Control. In this way not only the entire authority thitherto exercised by the Court of Directors was transferred to the Board of Control, but also the Court of Proprietors was deprived of its supreme authority. It could not over-rule a decision of the Court of Directors which had received the approval of the Board of Control. Political power was thus transferred to the Board of Control; the Directors had to play second fiddle to the Board. The only remedy they possessed in law was their right to challenge, by petition to His Majesty in Council, any order of the Board of the Control if it appeared to them to be in no way connected with the civil or military government and revenues of the Company's territories in India. The Court of Directors made use of this right only once, and that in 1786.

From the foregoing account of the powers of the Board of Control it would appear that the Directors were assigned a very inferior position in the administration of Indian affairs. Such however was not the case. The Directors were still very strong; they retained their patronage and had the right of dismissing their servants in India, initiating policies and controlling the vast amount of busi-

ness. The Board of Control was normally not an originating body; its function was to revise and exercise control over the doings of the Directors. Had the Directors been left with no powers, they would have opposed the Bill with all their might as they had earlier opposed Fox's Bill. Moreover, the Board was quite willing to leave the Directors alone in the administration of the details; it had no strong motives to interfere with them. It was interested in the foreign policies of the Indian authorities and the commercial policy of the Company.

It is very likely that considerable difficulties would have arisen if the Board of Control had followed the letter of the law in exercising control over the Directors. But the English spirit of accommodation smoothed the way of both the parties. The Directors sent the despatches to the Board as soon as they were received. Conveniently thereafter the Chairman and the President met over a cup of tea when the Chairman outlined the course of action he intended proposing on the despatch. A discussion followed and very often a course of action was agreed upon. The Chairman would then call a meeting of the Directors where he would secure their approval to the course of action he had already agreed upon with the President. In due course a draft of the proposed despatch would be sent to the Board of Control. The President would then signify his approval whereafter the final draft would be submitted and approved. It has been reckoned that between 1784 and 1833 fifty per cent of the despatches were approved in toto by the Board. .... Only five per cent of the despatches are known to have been issued against the declared and determined opposition of the Directors.\*

A few words about the way in which the office of the President of the Board emerged and the way in which the President came to act on behalf of the Board would not be out of place here. The quorum necessary for a meeting of the Board was fixed at three. The Chancellor was to preside over its meetings, and in his absence the Secretary of State. If both of them were absent, as generally happened because they were busy ministers and could afford little time for the meetings of the Board and soon ceased attending them, the senior member presided. The senior member therefore automatically emerged as the President of the Board. The three junior

\* Shri Ram Sharma: *A Constitutional History of India*, page 27.

members, too, had no urge to attend the meetings and quietly dropped out. The work of the Board came to be performed by the President. To keep up the fiction of the quorum of three members the President secured the signatures of the Chancellor and the Secretary of State. It is also interesting to note that with a view to avoiding the charge of burdening the English taxpayer with the cost of supervising Indian affairs, it was provided in the Act that the four Privy Councillors would get no salaries. But it was never the intention that they would work without remuneration. Sinecures were provided for them. The members of the Board thus became a part of the ministry, going out of office with the change of government. 'The President was virtually a secretary of state for India, and Indian affairs became a matter for the Cabinet in the same manner as those colonial issues which were dealt with by a Secretary of State.\*

This system was generally known as Dual or Double Government. It was called by this name because under it the Indian affairs in England came to be managed by two independent authorities, the Board of Control and the Court of Directors. Before the passing of Pitt's India Act the affairs of the Company were managed by the Court of Directors (subject to the superior authority of the Court of Proprietors). Appointments to all high offices like those of the Governor General, Governors and Councillors were made by the Directors who were also responsible for determining the policy to be followed in regard to Indian affairs. The Act of 1784 retained this authority, but superimposed on it the authority of the Board of Control and empowered it to superintend, direct and control the acts and operations of the Company's government in India. This cumbersome and elaborate system of checks and controls as modified in details by subsequent Acts, remained in force until 1858 when the Crown assumed responsibility for the good government of the Indian territories. (The student should not confuse the Dual Government of Company's affairs in England established by Pitt's Act with the Dual Government established by Clive in Bengal. They have nothing in common except the names).

Before passing on to the changes the Act introduced in the structure of the government in India, we may note that for the first

\* Keith : *op. cit.*, page 99.

time it described the territories acquired by the Company in India as 'British possessions'.

(b) We may now briefly note the changes introduced by the Act of 1784 in the governing bodies of the different Presidencies in India, and the steps it took towards increasing the control of the Governor General and his Council over the governments of Bombay and Madras. It reduced the number of members of the Councils at Calcutta, Bombay and Madras to three, one of whom was to be the Commander-in-Chief of the armed forces of the Company in the presidency. If the Commander-in-Chief of Bengal happened to be present at Bombay or Madras, he was to take the place of the local Commander-in-Chief in the Council, though the latter could be present. In the Council the Commander-in-Chief had precedence next to the Governor General (or to the Governor as the case might be). The reduction of the strength of the Councils from four to three was an important step ; it enabled the Governor General (and the Governors) to make an effective use of his casting vote. If he could win over one of the three members to his point of view, he could carry on the administration as he desired by means of his casting vote. It should also be noted that the members of the Councils were to be appointed from amongst the senior servants of the Company in India ; the experiment of appointing them from amongst public men of England tried by the Act of 1773 was given up ; it was a failure. Remembering the way in which Warren Hastings had resigned in 1776 and to avoid repetition of the process, the Act laid down that all resignations must be given in writing.

The Act of 1784 vested the power of making appointments to the civil and military offices in India in the Court of Directors ; patronage was denied to the Board of Control. The Directors thus appointed the Governor General, the Governors of Bombay and Madras, Commanders-in-Chief and members of the Councils of Calcutta, Bombay and Madras. The Crown, though it had no hand in their appointment, had the right to recall them. The Directors also had the right to recall any servant of the Company. Lest difficulties should arise on account of the exercise by the Crown of its right to recall any servant of the Company, the practice of appointing the Governor General, Governors of Bombay and Madras, Commanders-in-Chief and members of the Councils of the three

presidencies in consultation with the Cabinet was developed. The right to recall was exercised once by the Crown, and once by the Directors, though on different occasions. It may also be noted here that while members of the Councils had to be appointed from amongst the covenanted servants of the Company, the Governor General, the Governors and the Commanders-in-Chief could be and were usually appointed from amongst men in the public life of Great Britain. It was in exceptional cases that persons in the service of the Company in India were appointed Governors of Bombay and Madras.

The process of the unification of India under a central government tentatively begun by the Regulating Act of 1773 was carried a step further by Pitt's Act. It brought the governments of Bombay and Madras under the control of the Governor General of Bengal and his Council to a greater extent than before. The Governor General and Council of Bengal were empowered to superintend, control and direct the governments of the other Presidencies in 'all such points as relate to any transactions with the country powers, or to war or peace, or to the application of the revenues or forces of such presidencies in times of war, or any such other points as shall, from time to time, be specially referred by the Court of Directors to their superintendence and control.' The governments of Bombay and Madras were forbidden to declare war, start hostilities against any Indian prince, or make treaties with them, without the express approval of the Governor General and his Council, except in sudden emergency, or imminent danger. The government of a presidency failing to obey the orders of the Governor General and Council was liable to be suspended by the latter. The governments of the subordinate presidencies were required to send to the Governor General and his Council copies of all the regulations made by them. In this way the administration of military affairs and the conduct of diplomacy came to be concentrated in the hands of the Governor General-in-Council who alone had the right to conclude treaties.

The Act of 1784 also repeated and strengthened the provisions of the Act of 1773 designed to eliminate evil practices. Receiving gifts and presents was considered to be extortion and made punishable as such. Officers of the Company on their return to England after service in India were required to declare on oath the amount of

property they had brought with them, and a special court consisting of three judges, four peers and six members of the House of Commons was to be established for trial of offences committed by the servants of the Company in India. The court was, however, never set up. Special powers were given to the Governor General and the Governors authorising them to arrest persons suspected of carrying on illicit correspondence with persons in authority whether in European settlements or in native states. This power seems to have remained unused.

**The Constitutional Importance of Pitt's India Act.**— From the preceding account of the main provisions of the Act of 1784 it should be clear that it occupies an important place in Indian constitutional development. It not only made vital changes in the Company's administrative system in India (by reducing the strength of Councils from four to three, and subordinating the governments of Bombay and Madras to the Governor General-in-Council of Bengal), but what is more important, it firmly subjected it to the British Government's superintendence and control. All political and diplomatic power previously exercised by the Court of Directors was transferred to the Board of Control. The Directors, no doubt, appointed and instructed the officials, but the instructions could be varied and the officials recalled by the Board of Control. Though the Directors still retained large powers, they were placed in complete subordination to the Board; real effective control over the Company's government in India was transferred to the latter. The system established by the Act of 1784 continued, with modifications introduced by subsequent Acts, till 1858.

**Defects of the Act.**— The chief defect of the Act of 1784 lay in the system of Dual Government it established. The division of powers between two different authorities in such a way as to invest one of them with the power of making appointments and initiating policy and the other with the power of recalling the officials and revising and altering that policy could not but lead to confusion and difficulty. That conflicts between the Directors and the President of the Board were not many and frequent does not show the virtues of the Act but the spirit of compromise and accommodation of those who worked it.

Sir Courtenay Ilbert describes the procedure established by

the Act of 1784 as 'cumbersome and dilatory'. It necessitated cross references between the President of the Board of Control and the Chairman of the Court of Directors which took an inordinately long time and were tedious. It has been calculated that on an average it took about two years to get an answer to a despatch sent from India. The result was that administration came to be carried out by men on the spot in India, and 'the English direction of Indian affairs was very often in the nature of a post mortem'.\*

The way in which the Board of Control functioned meant the placing of the entire responsibility for the supervision and control of Indian affairs on one individual, the President of the Board. His intimate connection with the ministry assured him of the automatic support of the party majority in Parliament. The result was that Indian affairs were practically removed from parliamentary politics ; all the more so because the President of the Board was not required to lay annual or periodical accounts of India before the House. The President became almost irresponsible, and Parliament ignorant about Indian affairs. It may also be mentioned here that the Directors managed to keep the President happy and satisfied with the way they distributed the patronage at their disposal by giving him a share in it, twice as large as that enjoyed by a single director. The intentions of Pitt might have been very good and the Bill he introduced very wisely and skilfully drafted ; in its actual working, however, it did not prove very beneficial from the point of view of the Indians.

The following extract from a speech delivered by Lord Palmerston in 1858 sums up the defects of Pitt's India Act in a beautiful way. He said : 'The functions of Government and the responsibility have been divided between the Directors, the Board of Control and the Governor General in India, and among these authorities it is obvious that despatch and unity of purpose can hardly exist. Before a despatch upon the most important matter can go out to India it has to oscillate between the Cannon Row and the India House,... and that the adventures of a despatch between these two extreme points of the Metropolis are often as curious as those adventures of a Guinea which we have all read.'†

\*Sri Ram Sharma, *op. cit.*, page 30.

† Quoted by Sethi and Mahajan : *Constitutional History of India*, page 26.

**The Legislation of 1786.**— It was pointed out above that the reduction of the strength of the Governor General's Council from four to three enabled the Governor General to make an effective use of his casting vote and carry on the administration of the presidency as he deemed best. But Lord Cornwallis who was appointed to succeed Warren Hastings as Governor General insisted that he would be the Commander-in-Chief also. That meant the reduction of his Council to two members only. The casting vote of the Governor General thus became ineffective. Cornwallis therefore insisted that he should be given the power to overrule his Council whenever he deemed it necessary. An Act was passed in 1786 which permitted the union of the offices of Governor General and Commander-in-Chief in the same person and enabled the Governor General to override his Council in cases of necessity. It also provided that the approval of the King for the person appointed as Governor General was not necessary. Another Act of the same year repealed the provision of the Act of 1784 about the declaration of their property by the servants of the Company returning to England. Lord Cornwallis reorganised the judicial administration of Bengal and also introduced the famous Permanent Settlement.

#### D. THE CHARTER ACTS OF 1793 AND 1813

**The Charter Act of 1793.**— The Charter of the Company required renewal every twenty years. The occasion was utilised by Parliament to institute a thorough investigation into the affairs of the Company both in India and England, and to alter the conditions on which permission to trade was to continue. The Act which renewed the Charter in 1793 was passed without any serious opposition because the attention of Parliament was almost monopolised by the war with France, and also because the finances of the Company were in a tolerably satisfactory condition. Although the Charter Act of 1793 is a long one, it introduced no important alterations in the system of government; it was a measure of consolidation.

The changes it introduced related to matters of minor importance. Some of them are noted below. It renewed the trade monopoly of the Company for another period of twenty years, changed the constitution of the Board of Control as regards number and qualifications of members, and provided for the payment of their salaries and the expenses of the staff of the Board out of Indian

revenues. The Board was to contain five instead of six members, because the number of the junior members was reduced from four to three. The seniormost of the junior members was made the President. It was no longer necessary for the two remaining junior members to be Privy Councillors. The Secretary of the Board was allowed to sit in Parliament. Power was given to the Directors to raise the dividend to 10 %.

The power of the Governor General to over-ride the majority decision of his Council was repeated. The Governors of Bombay and Madras were also given the power to over-rule their Councils in cases of necessity, except in judicial matters and taxation. The Governor General was given the power to appoint a Vice-President of his Council who could officiate for him in his absence. The Governor General-in-Council was given fuller powers to superintend, direct and control the Governments of Bombay and Madras in all cases relating to war and peace, relations with Indian States, collection and application of revenues, and employment of forces; in short their civil and military governments in general. These Governments were required to obey the orders of the Governor General-in-Council unless they were repugnant to the instructions received from England.

Mention may also be made of the manner in which the Charter Act of 1793 contributed to the growth of the central power in India. The Governor General was the Governor General of Bengal but not of India; he and his Council could superintend, direct and control the Governments of Bombay and Madras, but could not issue orders to the servants of the Company there. The Act of 1793 provided that if the Governor General happened to be in Madras or Bombay, he could supersede the local Governor as the head of the administration and preside at the meeting of the Council. The local Governor could be present at such meetings. The Governor General was also empowered to issue orders to any of the Company's servants without previously communicating them to the local Council. He could also act with the local Council in all things as with the Council of Bengal. These provisions evidently led to the growth of a central power in the country.

The Act of 1793 authorised the local governments to appoint scavengers for the Presidency towns and to levy a sanitation tax to meet the cost. It also authorised them to grant licenses for the sale

of spirituous liquors. This was the beginning of the evil system from which we suffer till today.

It is also worth mentioning that the Act provided for an annual statement about the affairs of the Company in both England and India to be placed before Parliament.

**Legislation between 1793 and 1813.**— Parliament passed Acts in 1797, 1799 and 1800 which made minor changes in the administrative structure set up by the Act of 1793 of which notice may be taken. The Act of 1797 prohibited unauthorised loans by British subjects to Indian princes, and reduced the number of judges of the Calcutta Supreme Court to three. It recognised and confirmed the Regulation made by Cornwallis which provided for bringing together in a code all the regulations that might be made for the administration of the British territories in Bengal. The Act of 1799 empowered the Company to raise and maintain British troops in India. The Act of 1800 provided for the establishment of a Supreme Court at Madras, and extended the jurisdiction of the Calcutta Supreme Court to the district of Banaras.

**The Charter Act of 1813.**— The conditions under which the Charter Act of 1813 was passed were very different from those prevailing in 1793. It was preceded by the most searching investigation which had yet taken place into Indian affairs. The occasion for this investigation was provided by the petition of the Company for the return of £ 1,200,000 due to it from the Government and for a loan of equal amount to help it tide over the difficult and embarrassing financial position into which it had been landed by the wars of Lord Wellesley during his seven years tenure of office as Governor General. The trade of the Company had declined and its public debt had mounted highly; it stood at £ 21 millions in 1805. As a preliminary to the grant of relief Parliament set up a Committee in 1808 to inquire into the state of affairs in India and recommend the conditions on which relief could be granted. It sat for four years and produced several reports. According to Ilbert its fifth report published in 1812 is the best authority on Indian land tenures and the judicial and police arrangements of that period. Thus by the time the question of renewing the Company's Charter came up in 1813, Parliament had a thorough knowledge of Indian affairs.

Mention must be made of an important question that came up

for discussion at that time. It was whether the Company's commercial monopoly of Indian and Chinese trade should be continued or not. The question arose because the European ports had been closed to British merchants by an order of Napoleon. They therefore demanded that the Indian and Chinese trade should be thrown open to them. They saw no reason for their exclusion from a share in the eastern trade when they found ships flying American flag poaching on the Company's preserve in India. A strong agitation was carried on by merchants, manufacturers and shipowners belonging to different parts of Great Britain; they sent petitions to Parliament not to renew the Company's monopoly but to throw open trade with India to all British subjects. They argued that every citizen had the right to trade everywhere he liked. They advanced other arguments also into which we need not go. The Company naturally struggled hard to maintain its privileges and drew the attention of Parliament to the evil consequences bound to follow from the presence of a large number of European traders in India, who, it was alleged, would insult, plunder and oppress the natives of the country with impunity, since no laws enacted in Great Britain could restrain them outside. The controversy was settled by a compromise which allowed the Company to continue its monopoly of the Chinese trade, but threw open the Indian trade to all British subjects, with the exception of tea which remained the monopoly of the Company.

Closely connected with the question of throwing open the Indian trade to all British subjects was the question of allowing missionary workers to come to India for propagating Christianity and converting Indians to it. It was argued on their behalf that it was the duty of Great Britain to improve the religion and morals of the Indian people. Those who spoke on behalf of the Company opposed the move on the ground that it would amount to interference with the religion of the people and would alarm them and rouse their religious antagonism.

All these issues were thoroughly discussed. Government submitted thirteen resolutions to Parliament in 1813 which constituted the basis of the Charter Act of the same year. We may now describe its main provisions.

The Act of 1813 renewed the charter of the Company for a

further period of twenty years ; and while asserting 'the undoubted sovereignty of Crown in and over' the territories acquired by it in India, granted the Indian possessions and their revenues to the Company. The language of the Preamble to the Act is highly significant ; for the first time it asserted the sovereignty of the Crown over Indian territories, and thus set at rest the constitutional controversy of the preceding century.

While retaining the Company's monopoly of the Chinese trade, it threw open the general Indian trade to all British subjects, excluding the tea trade which remained the Company's monopoly. Various restrictions were, however, imposed upon the right of British merchants, manufacturers, etc., to trade in and with India. No person could come to India for any purpose save under the system of licenses. The Act empowered the Court of Directors, and, on its refusal, the Board of Control, to grant licenses to persons coming to India for the purpose of enlightening or reforming Indians or for some other lawful purpose. Persons entering India without license were liable to arrest and punishment.

The Act reduced the debt owned by the Company to the Government and raised the rate of dividend to  $10\frac{1}{2}\%$ . It required the Company to separate the commercial from revenue accounts, and laid down that the Indian revenues were to be spent on the maintenance of the armed forces, payment of interest, maintenance of the civil and commercial establishments.

In view of the resolution submitted by the Government to Parliament that it was their duty to 'promote the interest and happiness of the native inhabitants of the British dominions in India', and to introduce among them knowledge and measures tending to improve their religion and morals, the Act of 1813 provided for setting apart a sum of one lac of rupees each year to be spent on the promotion of literature and knowledge of sciences among the inhabitants of India. It also provided for the appointment of a Bishop at Calcutta with three archdeacons under him. This later on developed into the Ecclesiastical Department. Christian missionaries could come to India under permits.

The Act restricted the patronage of the Company in two ways. The appointment of the Governor General, Governors, and the Commander-in-Chief henceforward required the approval of the

Crown, and that of members of the Councils the approval of the President of the Board of Control. In the second place, no person could be taken by the Company in its service unless he had resided for four years at Haileybury and produced a certificate that he conformed to the requirements of the College. Similarly, for military service residence at the college at Addiscombe was made essential. The President of the Board of Control was given the right to supervise and to control these two institutions. Instead of sending their nominees direct to India, the Directors had first to send them to one of these two institutions. This was the beginning of regular training for members of the civil service.

Since India had become a part of the British Empire (the sovereignty of the Crown was asserted formally in the Act of 1813 for the first time), the British Government was given the right to station 20,000 Royal troops in India at the cost of the Company. British subjects coming to India for trade or other lawful purposes under the system of licenses were liable to taxation by the Company's government in India. Justices of the Peace were appointed to try cases brought against them for trespass, assault, and also for small debts. This laid the beginning of the vicious system according to which Europeans could be tried in India only by European judges.

During the twenty years following the renewal of the Company's Charter in 1813 Parliament passed several Acts which defined and added to the powers of the Company. An Act passed in 1814 gave it the power to levy custom duties and other taxes; another passed in 1818 validated marriages contracted among Christians in India and performed by Scotch clergymen. An Act of 1820 authorised the Company to raise a volunteer corps from amongst its own servants, and another passed in 1823 burdened India with the salaries and pensions of the British troops stationed in India, the salaries and pensions of the judges of the supreme courts, and the pensions payable to the Bishop of Calcutta and the archdeacons working under him. This Act also created a Supreme Court in Bombay in place of the old Recorder's court. The Act of 1832 gave the Company the right to appoint justices of the peace from among Europeans in India other than those under its service.

These years also witnessed a great expansion of the British empire in India. The defeat of the Marathas led to the inclusion of

Maharashtra and Central India in the territorial possessions of the Company and also the extension of its sway over the Rajput states in Rajputana. By 1833 only the Punjab, Sind, Gwalior, Indore and Bhutan remained outside the influence of the Company. Most of this extension took place during the Governor Generalship of Lord Hastings who completed the work begun by Lord Wellesley. The regime of Lord Hastings is also famous for the many administrative changes he introduced. He reversed the policy of Lord Cornwallis and combined magisterial functions with those of revenue collection and administration. The office of the District Magistrate and Collector may be said to have been brought into existence by Lord Hastings. He also encouraged the appointment of Indians to judicial posts and took interest in the educational progress of the people of India. The Hindu College was started at Calcutta during his regime. The question of the control of the press also became important during his regime. Lord Hastings believed in the value of an independent press and so modified the regulations imposed on the press by his predecessors, and at a later stage abolished the censorship. But fresh regulations were imposed in order to prevent editors from publishing objectionable matter in the papers. Hastings also introduced land settlements in various parts of the country on a temporary basis. In 1829 many changes were made in the judicial administration of the country; many old courts were abolished and new ones created in their place. One of the newly established courts was that of the District and Sessions Judge which was the highest court for civil and criminal cases in the district.

We may now proceed with the Charter Act of 1833 which was responsible for putting an end to the commercial activities of the East India Company and introducing a highly centralised administration in the country. For the student of Indian Constitutional History the Act of 1833 is the most important after the Acts of 1773 and 1784.

#### E. THE CHARTER ACTS OF 1833 AND 1853

**The Charter Act of 1833.**— For a proper appreciation of the main provisions of the Charter Act of 1833, which Lord Morley described as 'the most extensive measure of Indian Government between Mr. Pitt's famous Act of 1784 and Queen Victoria's assumption of the Government of India', one must bear in mind the fact

that it was passed at a time 'when Whig and Liberal principles were politically victorious, when Macaulay was Secretary to the Board of Control, and James Mill, the disciple of Bentham and admirer of his views on legislation and codification was examiner of correspondence at the India House.\* During the twenty years preceding it many liberal measures had been placed on the English statute book. 'Slave trade had been abolished in 1811; a hundred felonies were exempted from capital punishment in 1823; and Catholics were emancipated in 1829. The Government of the Duke of Wellington, which had hitherto opposed the extension of suffrage had resigned, and was succeeded by the Whig ministry of Lord Grey.'† Charles Grant, President of the Board of Control, in the course of his opening speech in the House of Commons observed that the efficiency of the Government of India was marred by the union of the trader and the sovereign, and that the intervention of the home authorities in the administration of Indian affairs should be confined to 'cases of a strong and extraordinary nature, or rather to cases of a general nature', and that administration should be left to the people in India. The discussion in the House of Lords centred round the proposal that Indians should be admitted to offices in the government of their country. Buckingham said in the House of Commons that while it was encouraging to see the termination of the commercial activities of the East India Company, it was preposterous 'to leave the political government of an immense empire in the hands of a joint stock company, whose interests were merely those of proprietors of India stock, anxious chiefly to secure payments of their dividends, having no interest whatsoever in the advancement of the happiness and welfare of the people, which was the only legitimate end of all government.'‡ In other words, whereas in 1813 there was no idea of putting an end to the political activities of the Company, in 1833 the question was seriously mooted. It was the able advocacy of the Company's cause by Macaulay that was mainly responsible for staving off the day. He said that the Company should be allowed to administer the affairs of their territories in India because India was not ripe for representative institutions. He quoted James Mill who had written strongly in favour

\* Keith : *op. cit.*, page 131.

† C. L. Anand : *The Government of India*, page 26.

‡ *Ibid*, page 28.

of democracy to the effect that representative government was 'utterly out of the question' in India.

The Charter Act of 1833 was passed on August 28, and came into force on the 22nd of April, 1834. It allowed the Company to retain its administrative and political powers till the 30th of April, 1854. The territories and revenues of India were granted to the Company to be administered by it 'in trust for His Majesty, his heirs and successors, for the service of the Government of India', but put an end to its commercial activities. The monopoly of trade with China and in tea was taken away from it. The Company thus ceased to be a mercantile corporation which it had been since its inception in 1600, and became a purely administrative body. All the debts and liabilities of the Company were charged to Indian revenues, and the Company was to be given a dividend at the rate of ten pounds and ten shillings per cent per annum of the amount of its capital stock. The dividend could be redeemed on payment of £ 200 for every £ 100 of capital stock at any time after April 1874. In other words, the shareholders were to receive their dividends for another forty years. The Board of Directors was retained, and it was proposed to reduce its patronage in the following manner. The Directors were to nominate twice as many persons as the number of vacancies in the services; the nominees were to receive instruction in the Haileybury College, and to be examined at the end. The topmost of the successful candidates were to be appointed to the vacancies. The Directors fought hard against this provision, and by the amending Act of 1834 they were allowed their patronage for another twenty years.

In the second place, the Act changed the constitution of the Board of Control. It was to consist of the Lord President of the Council, the Lord Privy Seal, the First Lord of the Treasury, the Principal Secretaries of State, the Chancellor of the Exchequer as *ex-officio* members, and such other Commissioners as may be appointed. But in as much as all its powers were to be executed by its President (the Commissioner first named in the Letters Patent was to be the President), the changes made by the Act had no practical effect. The only practical difference was that the President became a Minister for Indian affairs and had two Assistant Commissioners to assist him. They were not his 'colleagues but assistants.

The old Secret Committee for the despatch of confidential documents was also retained.

In the third place, the Act removed all restrictions on the admission of British subjects for trade, industry, missionary work, or any other lawful purpose. Any British subject could buy land and settle in the country without any permit or license. The Governor General-in-Council was required by law or regulation 'to provide with all convenient speed for the protection of the natives of the said territories from insults and outrage in their persons, religions or opinions.'

In the fourth place, the Act centralised the administration of India. This was achieved in several ways. The designation of the Governor General of Bengal was changed to Governor General of India. Since he was to carry on the work of administration with the help and advise of his Council, he came to be described as the Governor General-in-Council, and was invested with full powers and authority to superintend and control the Presidency Governments in all matters relating to civil and military administration. The Governors and Governors-in-Council were required to obey all orders and instructions received from the Governor General-in-Council in all cases. All revenues were to be raised under the authority of the Governor General-in-Council who was also to have complete control over all expenditure. Presidency governments could spend only that money which was sanctioned by the Governor General-in-Council.

In short, there was only one budget for the whole country, and it was prepared by the Governor General-in-Council. The creation of a new post carrying a pension with it required the previous sanction of the Governor General-in-Council. The power to suspend any member of the Governments of Bombay and Madras who disobeyed the Governor General-in-Council granted by the Act of 1784 was continued by the Act of 1833. Any provincial government which failed to carry out the instructions of the Governor General-in-Council could be suspended. The degree of centralisation effected can be easily gauged from the following extract from a despatch sent by the Directors to the Governor General in 1834. They wrote:

'You are to consider to what extent the powers of government can be best exercised by local authorities, in what manner and to what extent, and in what

particular way they are likely to be best exercised when retained in your own hands.'

On this topic we may quote Principal Shri Ram Sharma. He writes :

Even in matters which were left to the local authorities the Governor General was told five years later not to "allow to pass without comment, and, if necessary, without active interference, any measure having in your opinion an injurious tendency either to one presidency or to the (Indian) Empire at large." The immediate result of this policy was to centralise all power practically in the hands of the central government. In sanctioning the demands for expenditure it scrutinised every item submitted and could raise problems of administration as well as of administrative policy. All the subordinate governments kept the Government of India continuously informed of their progress in all departments of provincial administration. The Government of India when it acknowledged the receipt of such information exercised the right of commenting upon the work of the provincial governments.\*

The second way in which the Act of 1833 led to the centralisation of power in the hands of the Governor General-in-Council was by empowering him to make laws and regulations for 'all persons, whether British or native, foreigners or others, and for all courts of justice, whether established by charter or otherwise; and for all places and things whatsoever within and throughout the whole and every part' of the Indian territories, as well as for 'the servants of the Company within the dominions of princes and states in alliance with the Company.' This meant the taking away from the various Presidency governments the power of making laws and regulations they had enjoyed till then. Henceforth, they could only submit to the Governor General-in-Council 'drafts or projects of any laws or regulations which they might think expedient.' The Governor General-in-Council was required to consider these drafts or projects, and to communicate his resolutions on them to the government proposing them.

In these days of decentralisation this might appear to us as a retrograde measure. In the conditions prevailing in India at that time it was a much needed reform. It was necessary to rid the country of one of the greatest evils from which it suffered; namely, the diversity and the ill-defined authority of the sources from which laws and regulations emanated at that time. Sir Courtenay Ilbert notes five different bodies of statute law in force in India in those

\* Shri Ram Sharma : op. cit., page 50.

days. They were: (i) the statute law introduced by the Charter of George I and applicable in Presidency towns; (ii) the Acts made by British Parliament since then; (iii) the regulations made by the Governor General of Bengal and his Council, in force in the territories of Bengal; (iv) the regulations made by the Governor of Madras and his Council for the presidency of Madras; and (v) the regulations made by the Governor of Bombay and his Council for Bombay. All this diversity came to an end with the enforcement of this provision of the Act of 1833. For the rectification of other evils of the system, e. g., the nature of the laws and regulations and the anomalous and sometime conflicting jurisdictions of the various courts which administered them the Act authorised the Governor General in Council to appoint a Commission. The Indian Law Commission was set up to study, collate and codify the various rules and regulations, civil or criminal, written or customary, after a full inquiry into the jurisdiction, powers and rules of the existing courts, forms of judicial procedure, operation of laws, etc. Macaulay was the Chairman of this Commission. It did much useful work so long as Macaulay worked, but lost much of its vitality after his departure. It continued to exist for several years and published some bulky reports. Its work was continued in England under a provision of the Act of 1853.

Certain restrictions were placed on the legislative competence of the Governor General-in-Council. He could not make any law which in any way varied, repealed or suspended the provisions of the Act of 1833, or of the Mutiny Acts applicable to the soldiers and officers in the service of the Crown or of the Company, or which in any way altered the prerogatives of the Crown, or affected any part of the unwritten law or constitution of the United Kingdom on which the allegiance of any person to the Crown depended. He could not make any law which sought to empower any court other than a chartered court to sentence to death any British subject born in Europe without the previous sanction of the Court of Directors.

The laws made by the Governor General-in-Council did not require registration with any court. They were to be placed before Parliament, and could be disallowed by the Court of Directors under instructions from the Board of Control. Parliament also could make laws for the people of India as before. It may also be noted that

whereas the laws made by the Governor General of Bengal and the Governors of Bombay and Madras (acting with their Councils) were called *Regulations*, the laws made by the Governor General-in-Council after the Act of 1833 came to be known as *Acts*.

In the fourth place, the Council of the Governor General was enlarged by the addition of a fourth member, who was to be known as the Law Member. Two reasons were advanced in justification of this step. (i) It secured a member on the Council who could devote the whole of his time and attention and all the resources of his knowledge and ability in promoting the due discharge of its legislative functions. (ii) The law member could easily act as a substitute for the approval of the Supreme Court for all Acts made by the Governor General-in-Council, which approval was no longer required. Macaulay was the first Law Member appointed under the Act.

The Act laid down that the additional Law Member was not entitled to sit and vote in the Council except when it met for the purpose of making laws and regulations. But in their Despatch to the Government of India the Directors observed that the Government of India were not precluded from availing of the presence of the Law Member on any occasion they deemed desirable, of course, without giving him the right to vote. The Directors added that an intimate knowledge of what passed in the Council would be of great service to the Law Member in the discharge of his legislative functions. Macaulay attended the meetings of the Governor General's Council and exercised a great influence on the educational policy of the Government of India. It should be borne in mind that no person in the service of the Company was eligible for appointment as Law Member of the Council.

In the fifth place, the Act provided for the division of the Presidency of Bengal into two presidencies, namely, those of Bengal and the North-Western Province. Before effect could be given to this provision, it was suspended by an Act passed in 1835.

In the sixth place, the Act laid down that no native or natural born subject of the Crown resident in India could 'by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the Company.' It would be noted that this provision did not prescribe

any positive qualifications for service under the Company but simply removed some disqualifications. In their Despatch on the Act of 1833 to the Government of India the Court of Directors wrote as follows : 'The meaning of the enactment we take to be that there shall be no governing caste in British India, that whatever other tests of qualification may be adopted, distinctions of race and religion shall not be of the number ; that no subject of the King, whether of Indian, British or mixed descent, shall be excluded either from the posts usually conferred on our uncovenanted servants in India, or from the covenanted service itself, provided he be otherwise eligible consistently with the rule ..... Fitness is henceforth to be the criterion of eligibility.'

The excellent sentiment contained in the provision did not turn out to be of any great practical value ; Indians were not appointed to the higher or covenanted services. The main reason was that the provision of the Act of 1793 which excluded any but the covenanted servants of the Company from occupying places carrying a salary of over £ 500 a year was not repealed. The Directors themselves did not expect any marked difference in results from an observance of this rule because of the old provision.

Finally, we may draw attention to some minor provisions of the Act. It directed the Government of India to take steps for the improvement of the conditions of slaves and for the abolition of slavery throughout the Indian territories as soon as conditions might permit. It increased the number of Bishoprics in India from one to three and made the Bishop of Calcutta the Metropolitan Bishop of India. It also provided for the training of civil servants at the Haileybury College and for regulating admissions to it.

**Legislation between 1833 and 1853.**— There was very little of legislation in regard to India by Parliament during the twenty years following the passing of the Charter Act of 1833. An Act of 1835 suspended the provision of the Act of 1833 which provided for splitting up the overgrown Presidency of Bengal into two, and authorised the appointment of a lieutenant governor for the North Western Province of Agra.

**The Charter Act of 1853.**— As the term of the Charter Act of 1833 was drawing to a close, the authorities in London asked Lord Dalhousie, the Governor General of India, to indicate the lines on

which changes in the Indian government might be made. Lord Dalhousie wrote a masterly essay in reply in the course of which he strongly advocated the retention of the supreme control vested in the Governor General-in-Council, the right of the Governor General to override his Council, and pleaded for an entire reconstruction of the legislative machinery. His contention was that the Civilian members of the Council who were generally taken from the Bengal Service could know nothing about the local conditions in Bombay and Madras and had no skill in drafting legislative measures. The Commander-in-Chief also did not know anything about the matter, and the Governor General himself was too busy with his executive duties to pay sufficient attention to legislative enactments. Even the Law Member, 'although profoundly versed in English law, is as profoundly ignorant of all laws prevailing in India, whether Hindu, Mahomedan, regulations or acts. He knows absolutely nothing of the inhabitants, the tenures, the practices or the habits of the country to which he comes, and from which he is probably withdrawn when he has mastered these difficulties.' Lord Dalhousie therefore suggested that some more members be associated with the Governor General-in-Council for purposes of legislation. The Government of Britain accepted most of the suggestions made by Lord Dalhousie.

Mention may also be made of an important factor which might have influenced the British statesmen to some extent in determining one particular provision of the Charter Act of 1853. It would be recalled that when the Act of 1833 was under discussion in Parliament, persons like Buckingham stoutly opposed the practice of leaving the task of governing an extensive empire in the hands of a joint stock company. Whatever opposition there was to the exercise of political power by the Company came from Britishers ; there was no opposition to it from Indians. When the time for the renewal of the Charter came in 1853, things had changed considerably ; there was opposition from Indians also. Largely signed petitions against further extension of the Charter were sent to Parliament on behalf of the inhabitants of the three Presidencies. The people of Madras sent their petition through Lord Ellenborough in which, among other things, they urged the need of constructing public works and making better provision for the education of the people. The petition submitted on behalf of the people of Bombay (through Lord Monteagle) urged the abolition of the dual system of government in England by

the Board of Control and the Court of Proprietors, and recommended that the latter be replaced by an India Council. The inhabitants of Bengal also sent a petition (through Lord Harrowby) praying that in place of the dual system of government there should be a Secretary of State assisted by a Council of India, partly elected and partly nominated and that the legislature in India should be distinct from the executive and should contain some popular element. One of the main causes of Indian dissatisfaction against government by the Company was its failure to appoint Indians to higher posts in the administration as desired by a provision of the Act of 1833 which made Indians eligible for all offices under the Company. The declaration that fitness alone was to be the criterion for eligibility for appointment had raised high hopes in the minds of Indians which were disappointed. The submission of petitions to Parliament was the beginning of political agitation in the country which was to assume gigantic proportions in the years to come. The fact that opposition to the renewal of the Charter proceeded from Indians made the conditions under which the Act of 1853 was passed almost unique. As it happened, this was the last of the Charter Acts.

We may now note the main provisions of the Act of 1853. It differed from the previous Act by not fixing any definite period for which the Company was allowed to retain its powers. It simply provided that the Company would retain possession of the territories in India and govern them 'in trust for Her Majesty, her heirs and successors, until Parliament should otherwise direct'. It meant that the trust could be terminated at any time. Parliament was thus left free to relieve the Company of its political functions at any time it liked. This was a great departure from the past practice.

Secondly, the Act reduced the number of Directors from twenty-four to eighteen, and provided that six of them should be nominated by the Crown. They must have served in India for at least ten years. Six of the remaining twelve were also to have this qualification. In this way the Act paved the way for an expert council of advice. The quorum was reduced to ten making it possible for the Crown directors who were always present to form a majority in a thinly attended meeting of the Court. More significant was the fact that the Act deprived the Directors of their patronage by substituting the system of making appointments

on the basis of competitive examination for that of nomination. Competition was thrown open to all British subjects under a scheme prepared by the Board of Control. The new system had one grave defect; it made it very difficult for Indians to be appointed to the higher administrative posts in the government. The President of the Board of Control was placed on a level with the principal Secretaries of State as regards salary. The sanction of the Crown for all appointments to the Councils in India was made necessary.

The Act of 1853 continued the suspension of the division of the presidency of Bengal into two presidencies (contemplated by the Act of 1833), but authorised the appointment of a Governor for Bengal distinct from the Governor General of India. But it was only in 1912 that a separate Governor was appointed; till then Bengal had only a Lieutenant Governor.

Thirdly, highly important and significant changes were made by the Act of 1853 in the machinery for legislation in India. The Law Member was placed on a footing of equality with the three ordinary members of the Council by being given the right to sit and vote at executive meetings. For purposes of legislation the executive council was enlarged by the addition of one Chief Justice, one other Judge of a Supreme Court, and four provincial representatives. In other words, the executive council as expanded for legislative purposes was to consist of twelve members. They were the Governor General, the Commander-in-Chief, four ordinary members of the Council, the Chief Justice of Bengal, one puisne judge, and one representative from the civil service of each of the four provinces—Bengal, Bombay, Madras and the North-Western Province. The vital change introduced by the Act of 1853 was the presence of four representatives from the various Presidencies and provinces; it meant acceptance of the principle of local representation in the central legislature. The local representatives could press measures which they considered desirable or beneficial and oppose those they deemed harmful in the light of their knowledge of local conditions. The sittings of the legislative council were made public and its proceedings were officially published.

Here we see the beginning of a separate legislative organ of the government of India. A distinction came to be made between the executive and the legislative work. The executive work

could be done by the Governor General with one member of his Council ; the former could override the decision of a majority of his executive council. For legislative work the quorum was fixed at seven ; the presence of six or more legislative councillors was necessary besides that of the Governor General, or of the Vice-President in his absence. The Governor General could not override any measure adopted by the legislative council, but no law or regulation made by it could become effective unless it was assented to by the Governor General whether he was present at the meetings of the legislative council or absent from them.

It is noteworthy that the legislative council as constituted under the Act of 1853 consisted of official members only ; there was no non-official Indian or European on it. The suggestion was made for the addition of two non-official members ; it was however negatived on the ground that it would be impossible to nominate a Hindu and a Muslim who could be regarded as properly representative of their communities.

It should also be noted that the six additional members constituted exactly half the strength of the expanded Council. If even one member of the executive council happened to be absent when all the additional members was present, the Government of India was reduced to a minority. This fact acquired a good deal of significance because the six additional members were not content with confining themselves to legislative work, but wanted to give the expanded council 'the character of a miniature representative assembly, assembled for the purpose of inquiry into, and redress of, grievances'. They made Parliament their model and demanded that papers about non-legislative business should be laid on the table. 'They showed an inclination to inquire into executive business and even to criticise the government in respect of its grants to the Mysore prince. This attempt to cast doubt on the wisdom of the Government was as little appreciated in the United Kingdom as in India, and the step taken was remedied in 1861.\* In the legislative council discussion became oral as in parliament, and the examination of bills was conducted by select committees instead of by a single member. One can therefore easily see in the Act of 1853 the beginnings of the Indian legislative council. For the

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\*Keith : *op. cit.*, page 138.

first time in the history of British rule in India legislation came to be regarded as 'a special function of government requiring special machinery and special processes'\*.

In the last place, it may be mentioned that the Act of 1853 provided for the appointment of a body of English Commissioners in England who would give final legal form to the work of the Indian Law Commission appointed under the Act of 1833 which had been allowed to languish after the departure of Macaulay. The labours of the earlier Law Commission were thus utilised.

**The Act of 1854.**— Before concluding our review of the various Charter Acts which renewed the powers of the Company from time to time, and looking into the administrative system as it developed in India during the regime of the East India Company, we may briefly mention the conditions under which Parliament was led to pass an act in 1854 which authorised the Governor General-in-Council to establish Chief Commissionerships in the country.

During the first half of the nineteenth century vast additions were made to the territories of the Company in India. The only way in which the Company provided for the government of a newly acquired territory was to annex it to one of the three Presidencies. Under this system the Presidency of Bengal had become unwieldy. As we have seen, an attempt was made to relieve the government of Bengal by creating a new Presidency for the North-Western Province by the Act of 1833. The idea was however suspended by an Act of 1835 which provided for the appointment of a Lieutenant Governor for this province. This step was not found sufficient. The Act of 1853 provided for the appointment of a separate Governor or Lieutenant Governor for the Presidency of Bengal. But even this did not solve the problem of making arrangement for the administration of newly acquired territories.

An Act was passed in 1854 which authorised the Governor General in Council, with the sanction of the Court of Directors and the Board of Control, to take under his immediate authority and management any part of the territories for the time being in the possession of the Company, and to issue orders and directions necessary for its administration. He could appoint special officers

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\*Report on Indian Constitutional Reforms, page 38.

for their administration and to delegate to them such powers as need not be reserved to himself. These special officers were called Chief Commissioners. Chief Commissioners were appointed for Assam, the Central Provinces, Burma and other parts. Burma was placed under a Lieutenant Governor in 1897.

This Act also empowered the Governor General-in-Council to define the boundaries of the several provinces in India, and expressly vested in him all the residuary authority not transferred to any local government. The Governor General ceased to be the Governor of Bengal.

#### F. THE GROWTH OF ADMINISTRATIVE MACHINERY

Before describing the events which led to the transfer of responsibility for the administration of Indian affairs from the Company to the Crown in 1858 and studying the development of the Indian constitution under the Crown, we may with advantage cast a glance at the administrative system as it stood on the eve of the Sepoy Revolt in 1857, or the Mutiny as the British historians prefer to call it.

On the foundations laid by the Regulating Act of 1773 and Pitt's India Act of 1784, a strong and highly centralised system of administration had been set up by the Act of 1833. The Governor General-in-Council was the supreme executive authority for the whole of the Company's territories in the country which had been divided into a number of provinces for administrative purposes. Some of them were known as Presidencies and others as provinces. Bombay, Madras and Bengal were called Presidencies. Bombay and Madras were under the charge of Governors-in-Council, while Bengal was under a Lieutenant Governor. Agra was also under a Lieutenant Governor, while Assam, Punjab, Nagpur, Ajmer, etc., were known as Chief Commissioners' provinces. Unlike a Governor, a Lieutenant Governor and a Chief Commissioner had no Councils; the control of the Governor General over them was greater than over the Governors of Presidencies who had the privilege of direct communication with the Directors in England. The Governors and the members of their Councils were appointed by the Directors with the consent of the Crown, whereas the Lieutenant Governors and Chief Commissioners were appointed by the Governor General-in-Council. It should also be remembered that the Governors of

Presidencies were empowered to override their Councils like the Governor General.

The army was also highly centralised. Though it was divided into three separate commands, Bengal, Bombay and Madras, each under its own Commander-in-Chief, the Commander-in-Chief of the Bengal army was the Commander-in-Chief of India, and superseded the local Commander-in-Chief whenever he happened to be present in a presidency. This arrangement secured the unity of the army in the country. Besides these three armies, contingents of Indian troops under British officers were stationed at the capitals of various Indian States; they constituted an additional source of military strength.

For carrying on the work of administration a highly paid civil service had been brought into existence. It would be recalled that when the Company acquired political and administrative powers as a result of the grant of Diwani in 1765, the small number of servants it had had no training for this work and received low salaries. They made up for it by engaging in private trade and accepting gifts and presents. Administration thus became very corrupt. Clive tried to improve the situation by forcing the servants of the Company to enter into a new covenant or agreement by which they agreed not to engage in private trade and demand or receive illegal gratifications. This is why the services came to be known as Covenanted Services of the Company. Clive prepared a new scheme for compensating the servants of the Company for the loss suffered by them due to prohibition to engage in trade, etc. But his scheme was not accepted by the Directors. Further reforms were introduced by Cornwallis. With a view to preventing corrupt practices he raised the salaries of the servants of the Company. The Collector of a district was to receive Rs. 1500/- a month plus a commission on the revenues collected by him which came to more than his salary even. All promotions were to be on the basis of seniority. He also separated the work of revenue collection from that of adjudication. All the higher offices were reserved for Europeans, and a complex system of regulations was introduced to check misdemeanours. The Act of 1793 put some of the reforms of Cornwallis on a permanent basis. It provided that all vacancies in the service of the Company were to be filled up from among its civil servants.

belonging to the Presidency where they occurred. No officer of the Company was to get a salary of more than £ 500 a year who had not lived in India for at least three years. For promotion to an office carrying a salary of £ 1500 six years service was necessary, for a post worth £ 3000, nine years, and for one worth £ 4000 twelve years service. This scheme reduced the Directors' patronage; they could not directly appoint persons to higher posts and could only send their nominees as writers. It was only in areas exempted from the regulation system that the rules framed by the statute could be avoided. The system had one grave demerit; it effectively debarred Indians from superior services. It was not removed by the declaration made in the Act of 1833. The system of recruitment by open competition introduced by the Act of 1853 also hit the Indians very hard.

It may be mentioned that Lord Wellesley established a college at Calcutta where all the Europeans appointed to the various posts under the Company in India had to study Indian languages, law and history for three years. It had to be closed down because the Directors refused to accept the scheme. They started a college at Haileybury where their nominees had to reside for four terms before they could be sent out to India as writers. This College continued to function till 1858. It was closed because patronage was taken out of the hands of the Directors, and all recruitment to the services in India came to be based on the results of an open competitive examination. The object of the system of competitive examination was to secure for the Indian Civil Service young men who had received the best, the most liberal, and the most finished education that England could afford. But, as we have observed before, this system suffered from the very grave defect of excluding Indians from all higher posts in their own country. It stood in their way till competitive examinations began to be held in India (simultaneously with examinations in England), and thirty-three per cent of the posts in the Civil Service began to be filled on the basis of their results.

For the administration of justice several types of courts were established in the various provinces. It is not necessary to go into early history and describe the way in which Warren Hastings reformed the judicial administration of Bengal after the Company had decided to end the dual system and stand forth as the *Diwan*.

Suffice it to say that one Diwani Adalat for civil cases and one Faujadari Adalat for criminal cases were established in each district, and the Sadar Diwani Adalat and the Sadar Faujadari Adalat as courts of appeal for the whole province, the former for civil cases and the latter for criminal. The Sadar Diwani Adalat was presided over by the Governor and his Council, and the Sadar Faujadari Adalat by an officer working under the general supervision of the Governor and his Council. As the work of the Sadar Diwani Adalat increased it was found desirable to end the judicial work of the Governor and his Council, and entrust it to three judges in 1801. At a later date the number of judges was increased to four. In 1773 the Supreme Court was established at Calcutta with a view to protecting Indians against the rapacity and oppression of the servants of the Company. A Supreme Court was established at Madras in 1800 and one at Bombay in 1823. The working of the Calcutta and Madras Supreme Courts was most unsatisfactory from the point of view of Indians. In the words of Shri Ram Sharma they 'degenerated into tools of racial discrimination and superiority'. According to Macaulay the Madras Supreme Court beggared 'every rich native within its jurisdiction' and was inactive for want of somebody to ruin.

Cornwallis had tried to give the inhabitants of Bengal some measure of relief by separating revenue from judicial functions and entrusting them to separate hands. But at a later date there was a demand for the union of powers in the District Collector. Accordingly, the District Collector was given the power to entertain cases regarding rent and rights in land as well as magisterial powers. The office of the District Magistrate and Collector thus came into existence. At about the same time the court of the District and Sessions Judge also came into existence. In most of the districts there were Assistant Sessions Judges and Assistant Collectors. There were also Indian magistrates, sadar ameens and munsifs besides European Magistrates and Session Judges. The post of deputy collector was legalised in 1833, and that of deputy magistrate in 1843. The post of joint magistrate also came into existence. Mention must also be made of the Board of Revenue which was the supreme court for revenue cases and exercised supervision and control over the revenue work of the District Collector.

It should also be borne in mind that the law administered by the various courts was highly complex. It comprised the common law of England as it then existed, laws made by Parliament, laws made by Parliament for India, regulations made by the Governor General, and Hindu and Muslim Law. It was also hard to determine what the law was under each head. It was this complexity and uncertainty of law which necessitated the appointment of the Indian Law Commission by the Act of 1833.

Finally, it must be remembered that whatever the degree of the power and authority the Governor General-in-Council possessed to superintend, control and direct the governments of Bengal, Madras, Bombay and other provinces, he himself was not a despotic ruler. He was subject to the superior authority of the Board of Control and the Court of Directors in England. In other words, we may say that Indian affairs were administered from two centres, one in India and the other in England. We have described above the administrative system as it existed in India on the eve of the Sepoy Revolt of 1857 ; we may now briefly describe the part which functioned in England.

The Governor General of India-in-Council was subject to the control of two distinct authorities in England, the Board of Control and the Court of Directors. This is why the period from 1773 to 1858 is known as the period of Dual Government. Of the two, the Board of Control had greater power and authority in all matters except commercial, but the Court of Directors also remained an important factor in so far as the power of making appointments was in its hands. Moreover it had the great advantage of possessing expert knowledge. All Indian records were housed in the East India House and expert assistants examined them there. Much depended upon the personality of the President of the Board of Control. If he was a powerful man and had a seat in the Cabinet, he could manage the Directors more easily. A man like Castlereagh found it difficult to handle the Directors properly. No doubt, the President could send despatches to India through the secret committee and might receive despatches from India through that body without their contents being shown to the Directors ; in actual practice, however, the business was settled between the President of the Board and the Chairman of the Court informally. Formal draft was prepared and

submitted for the approval of the Board of Control only after agreement had been reached between the two. In this connection it must be remembered that the Board as such had ceased to function ; no assistant commissioners had been appointed since 1841, and all work was conducted by the President. He had a secretary who sat in the House of Commons.

Besides the Board of Control and the Court of Directors, there was another agency in England concerned with the supervision and control of Indian affairs ; namely, Parliament. It possessed supreme authority over them. It alone had the right and power to renew the charter of the Company and change or modify the conditions on which it was to be renewed. It also determined the constitution of India from time to time and passed Acts applicable to Indians. But though possessed of supreme and final authority, it did not interest itself in Indian affairs except occasionally. Several circumstances were responsible for this lack of interest which became less and less as the commercial interests of the Company decreased. Parliament had no adequate machinery for detailed supervision over Indian affairs ; there was no separate department dealing with them. Parliament did not get many opportunities of discussing them as the salaries of the President of the Board of Control and his staff were met out of Indian revenues and Parliament had nothing to do with them. Taxes were raised and spent by the authority of the Governor General of India in Council and they did not come up for discussion in Parliament. Little wonder that Parliament should have become a sleeping custodian of Indian interests, only occasionally awakened from its sleep.

## CHAPTER III

### END OF THE COMPANY'S RULE

#### GOVERNMENT OF INDIA ACT, 1858

**Introductory.**— The constitutional and administrative system whose development we have traced in the preceding chapter had certain highly anomalous features on account of which it could not endure for long ; radical changes in it were inevitable. In the first place, it vested sovereignty over the territories acquired by the East India Company in India in the Crown, but left their possession and their revenues and also their administration in the hands of the Company. This division was not only unprecedented but also unnatural. The logic of events was driving the British statesmen towards a state where it was to end and where not only *de jure* sovereignty but also *de facto* political power was to be vested in the Crown. In the second place, the union of the trader and the sovereign was also unprecedented ; it was contrary to principles of sound administration. Many British statesmen realised its illogical and untenable character ; unable or unwilling to end it, they did the next best thing ; they brought the Company's administration of Indian affairs under parliamentary control. The Act of 1833 took the first important step towards the abrogation of the union of functions by restricting the trade monopoly of the Company to only tea in India and throwing open the general trade in India to all European born British subjects. The next step was taken by the Act of 1853 which, as we have already seen, abolished all the trading privileges of the Company and reduced it to a purely administrative body, and renewed the Company's Charter not for the usual period of twenty years, but only 'until Parliament should otherwise direct'. The reduction of the number of Directors from twenty-four to eighteen, six of whom were to be nominated by the Crown, and the lowering of quorum to ten which made it possible for the government-appointed directors to be in a majority in a thinly attended meeting of the Court of Directors, and the withdrawal of all patronage from the Directors also prepared the ground for the abolition of the East India Company and the transfer of the territories, revenues, and control of management of Indian

affairs to the Crown in a not distant future. The end was hastened by the calamitous events that happened in India in 1857 which are known as the Sepoy Rebellion or Mutiny.

**Palmerston's Bill.**— As a result of the Mutiny the government of Lord Palmerston decided to abolish the Company and transfer the government of India from the Company to the Crown. To implement this decision he introduced a Bill in Parliament. It proposed to set up in London a President assisted by a council of eight members as the executive authority to superintend, direct and control the civil and military affairs and revenues of the Government of India in place of the dual authority of the Board of Control and the Court of Directors which had been performing this function since the passing of Pitt's India Act in 1784. Persons who were Directors of the Company or had served in India under the Company or the Crown were qualified to be members of the Council. The second reading of the Bill was passed by a large majority in the Commons; it could not however become law, because Lord Palmerston had to resign on some other issue. His successor, Lord Derby, entrusted Disraeli with the task of framing another bill. The new Bill proposed a different method of constituting the council which met with much ridicule. The bill was dropped. Lord Stanley who had succeeded Lord Ellenborough as the President of the Board of Control in the Derby ministry introduced a new Bill incorporating the resolutions which were adopted in the House of Commons on June 17, 1858. The resolutions deserve to be reproduced in full. They are as under:

1. 'That as the territories under the government of the East India Company are by law to remain under such government only until the Parliament shall otherwise provide, it is expedient that the transfer of such government to the Crown should now take place, in order that the direct superintendence of the whole empire may be placed under one executive authority.

2. 'That for this purpose it is expedient to provide that Her Majesty, by one of the responsible ministers of the Crown, shall have and perform all the powers and duties relating to the government and revenues of India, which are or may be now exercised and performed by the East India Company, or by the Court of Directors or Court of Proprietors of the said Company, either alone or with the approbation of the Commissioners for the Affairs of India.

3. 'That in order to assist a minister of the Crown in the discharge of his duties it is expedient that a Council be appointed of not more than fifteen members and not less than twelve.

4. 'That with a view to efficiency and independence of the Council it is expedient that it should be partly nominated and partly elected.

5. 'That the Chairman be directed to move the House, that leave be given to bring in a Bill pursuant to the said resolutions.'\*

It is interesting to note that when Lord Palmerston's Bill was under discussion, the Company struggled hard to retain its powers and privileges. It presented a 'weighty and dignified' petition, drawn up by John Stuart Mill, to both houses of Parliament in February, 1858, in the course of which it asserted that the Mutiny could not be regarded as a sufficient justification for the decision to abolish it because the responsibility for that calamity was as much that of Her Majesty's Government as that of the Company. The Court of Directors could not send any despatch to India without the full approval and consent of the President of the Board of Control. The Petition further asserted that the Company's government in India had been 'not only one of the purest in intention, but one of the most beneficent in act ever known to mankind'. The Company however failed to avert the impending sentence. The Mutiny had sealed its fate. The Bill introduced and piloted by Lord Stanley was passed by both houses of Parliament and received the royal assent on August 2. Before proceeding to describe its main provisions, a few words about the Mutiny may be added.

**The Sepoy Rebellion.**— It is not relevant to our purpose to trace the origin of the Mutiny and determine the causes of its failure. We need not even discuss the question whether it should be regarded as the first war of Indian independence. As students of the constitutional history of India our main concern is to study its effects on the growth of the Constitution and on Indo-British relations.

As regards the first, we may say that it came as a rude shock to the British statesmen and the British people, and opened their eyes to the highly anomalous character of the system that vested vast political power in a joint stock company. Its gravest defect was pointed out by Lord Palmerston in the memorable speech which he made while giving his reasons for ending the system of Double Government ; it was its utter *irresponsibility*. 'The principle of our political system is that all administrative functions should be accompanied by ministerial responsibility— responsibility to Parliament, responsibility to public opinion, responsibility to the Crown ; but

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\* Quoted from Chuni Lal Anand, op. cit., page 46.

in this case the chief functions in the government of India are committed to a body not responsible to Parliament, not appointed by the Crown, but elected by persons who have no more connection with India than consists in the simple possession of so much stock.\* The second grave defect, as described by Lord Palmerston, was the highly cumbrous, complex and inconvenient nature of the system of Double government. He observed that the functions of government and the responsibility had been divided between the Directors, the Board of Control, and the Governor General of India in such a way that despatch and unity could hardly exist. 'Before a despatch upon the most important matter can go out to India it has to oscillate between the Cannon Row and the India House ... and that the adventures of a despatch between these two extreme points of the Metropolis are often as curious as those adventures of a Guinea of which we have all read.'†

In a word, we can say that the events of 1857 deeply stirred the conscience of the British people and drove it to the conclusion, by a sort of irrepressible instinct, that the East India Company must go. The immediate effect of the Mutiny was the Act of 1858 which transferred the government, territories and revenues of British India from the Company to the Crown. Thenceforth, India came to be governed by and in the name of Her Majesty.

Secondly, it was felt that the Revolt was to some extent due to the exclusion of Indians from the Legislative Council set up by the Act of 1853, and to the absence of contacts between the government and the people which might have enabled the former to know the wishes and grievances of the latter and to remove them. This led the British Government to adopt the policy of associating Indians with the work of government, and to the passing of the Indian Councils Act of 1861.

The effects of the Mutiny on Indo-British relations and on the attitude of the British government towards the people of India were no less profound. For a proper appreciation of these effects it is necessary to understand the political atmosphere which prevailed in Great Britain in the thirties and forties of the last century. The

\* Keith : *Speeches on Indian Polity*, Vol. I, page 323, quoted by G. N. Singh : *Landmarks*.

† *Ibid.*

great Reform Act of 1832 which began the process of democratisation of the British House of Commons had in a way settled England's political ideal : it was to be democracy and not autocracy or pluto-cracy. This great liberal measure was followed by other measures breathing the liberal spirit ; e. g., the abolition of slavery, the passing of the first factory law, the repeal of the Corn Laws, and the first state grant to education. In 1839 Lord Durham submitted his report which recommended the establishment of responsible government in Canada as the best solution of her problems. Near about the same time Cobden declared that colonies could not be held by the sword, by armies and ships of war, but that the best way to retain them was to win their affection. These events show that in the early and mid-Victorian periods England pursued liberal statesmanship in her home policies. The same liberal spirit also inspired her in her relation to the colonies and to India. The fact that some of her best statesmen were opposed to any further extension of the Company's charter in 1833 and in 1853 proves this assertion. The clause in the Act of 1833 which laid down that no native of India 'shall by reason only of his religion, place of birth, descent, colour, or any of them be disabled from holding any place, office or any employment' under the Company is a further proof of the statement made above. In this connection it may be recalled that the Company was required to set apart a sum of one hundred thousand rupees for the advancement of education and learning among the Indian people. Efforts were also being made by Christian Missionaries to spread education among the people. On their side, Indians also were eager to assimilate the liberal Western outlook. The activities of Raja Ram Mohan Roy and other leaders of the Brahmo Samaj are a witness to this attitude. It would not be wrong to say that many Indians of those days accepted the British connection 'as ordained, in the inscrutable dispensation of Providence, for India's good.'\*

The Mutiny changed all this. 'The blight of distrust had begun to fall upon England's relations with India : these people had mutinied once and committed dreadful atrocities— how could one trust them not to plan further sedition ? After the Mutiny, testifies an eye witness, "the old sympathy with India changed to a feeling of repugnance : the old spirit of content with life and work in India, the

\* Cf. Zacharias : *Renaescent India*, pages 82-98.

old inclination to regard things in an Indian rather than an English light, gave place to a reluctance to stay in India longer than needs must, and a disposition to judge things by an emphatically English standard".\* In short the Mutiny was, to a large extent, responsible for the disappearance of the political liberalism which had earlier inspired British statesmen. That which was previously regarded as a sign of the people preparing themselves for self-government came to be viewed as sedition and therefore as a crime after the Mutiny. Before the Mutiny the Englishmen came into frequent and intimate contact with their Indian friends and were influenced by their views and opinions ; after the Mutiny this living contact grew less, and the Britishers began to deal with Indians in an official capacity. Their life came to be divided between the office and the club. All this meant not only the loss of the intimate counsel they got from their Indian friends, but also the growing racial estrangement which led persons like Kipling to remark : 'East is East and West is West, and the twain shall never meet.'

On their side, Indians could not forget the most cruel, brutal and ruthless way in which the Britishers quelled the Mutiny. 'The English killed their prisoners without trial and in a manner held by all Indians to be the height of barbarity . . . They massacred thousands of the civilian population . . . General Neil gave orders to his lieutenants that certain villages were marked out for destruction and all the men inhabiting them were slaughtered, and the indiscriminate burning of their inhabitants occurred wherever our English armies moved.'† Such a barbarous and cruel treatment could not be easily forgotten ; it tended to widen the chasm between the rulers and the ruled.

The Mutiny had other effects which persisted for long after the event itself. It made the British government realise more vividly than ever in the past that the only way to save the small numbers of Europeans from being overwhelmed by the unity between the Hindus and the Muslims was to keep them apart. The Mutiny was made possible by, and demonstrated the existence of, a good deal of amity and mutual sympathy and cooperation between the two major communities. The British statesmen set

\* Zacharias, *op. cit.*, pages 92-93.

† Garrat : *An Indian Commentary*.

themselves to the task of drawing a wedge between them and greatly succeeded in their efforts. They re-organised the Indian army on a new basis after the Mutiny. Before that event Indians stood mixed up in the ranks of the regular forces. There was no division or separation by caste or clan. The Hindus and the Muslims, the Jats, the Sikhs and the Poorbeas were mixed up so that each and all lost to some degree their racial or sectarian prejudices, and developed a rare spirit of comradeship or *esprit de corps*. It was the sentiment of unity thus created which made the Mutiny possible. The reorganisation of the army introduced after the Mutiny destroyed the basis of this sentiment of unity. Regiments, battalions and companies came to be organised on the bases of caste, community and province. The policy of 'counterpoise of natives against natives' was introduced. The evil effects of this reorganisation manifested themselves fully after the Partition when soldiers began to kill those whom they were expected to protect for no better reason than that they belonged to a different community whom they hated. Outside the army effect was given to the policy of encouraging the one and suppressing the other community. It was the Mohammedan community which was penalised first. The Muslims were deliberately kept out of the army and the permanent services. Later on it was the turn of the Hindus who had become 'seditious' to be treated in a discriminatory way. The Hindu-Muslim problem was largely a product of the post-Mutiny period.

Lastly, it may be pointed out that the invaluable assistance given by the rulers of states like Patiala, Jind and Nabha, without which the prospects of the British success in suppressing the Mutiny would have become very dim, made the Government realise the importance of cultivating cordial relations with the Princes. The policy of Dalhousie had alienated their sympathies a good deal. Accordingly, Queen Victoria found it desirable and necessary to issue a Proclamation assuring the Princes, among other things, that there would be no more annexations and that the Crown would regard their 'rights, dignity and honour' as its own.

We may pass on to an examination of the main provisions of the Act of 1858 and of its constitutional importance.

**The Government of India Act, 1858.**— This Act is known as the Act for the Better Government of India. It was given this name to

emphasise that what led the British Government to put it on the statute book was their earnest desire to remove the evils inherent in the system of Double Government initiated by Pitt's India Act of 1784. By abolishing the Company and transferring the government of India to the Crown it put an end to the great anachronism of a chartered company administering the affairs of a large empire. It also put an end to the confusion, obstruction and delay characteristic of the division of responsibility between the Board of Control and the Court of Directors. To that extent it did secure better government for India. But it did not make any change in the system of government in India, and did not associate her people with the work of administration. This object was achieved by the India Councils Act of 1861. The main provisions of the Act of 1858 may be stated as under.

1. It provided that India was to be governed by and in the name of Her Majesty. The powers and duties relating to the government and revenues of India, thitherto exercised by the Court of Directors of the Company and the Parliamentary Board of Control, were to be exercised by one of the Secretaries of State. Power was given to appoint a fifth principal Secretary of State for this purpose. He came to be known as the Secretary of State for India. In the discharge of his duties he was to be assisted by a Council consisting of fifteen members, and styled as the Council of India. Eight of its fifteen members were to be nominated by the Crown, and the remaining seven were to be elected by the Directors of the East India Company. A majority of both the nominated and elected members were to be persons who had served or resided in India for ten years at least, and had not left the country more than ten years before their appointment. This meant that the Council was to consist, in the main, of retired officials of the Government of India. Its members were to hold office during good behaviour, but could be removed by the Crown on representation being made by both the houses of Parliament. Vacancies in Crown appointments were to be filled by the Crown; those among persons elected by the Directors were to be filled by persons coopted by the Council. Each member of the Council was to receive an annual salary of £ 1200 out of Indian revenues. No member of the Council could sit or vote in Parliament.

2. The Council was to be an advisory body ; its members were to be 'neither the masters nor the puppets but the valuable advisers of the new minister'. It was to have no powers of initiative ; all it could do was to give its opinions on questions referred to it by the Secretary of State who could over-rule the majority opinion except in matters where he was bound by law to secure its concurrence. These included appropriation of revenues or property, division and distribution of patronage, sale or mortgage of property, contracts, alterations of salaries, furlough rules, etc.

3. The Council was to meet once every week to conduct Indian business transacted in the United Kingdom and to correspond with India. The Secretary of State, who presided over its meetings, was required to place before the Council every order or communication proposed to be sent to India or to be made in the United Kingdom, either in the weekly meeting or in the Council room where it remained for seven days. Every member was entitled to record his opinion on it. As stated above, the Secretary of State could over-ride the view of the majority, but whenever he did so, he was required to record in writing his reasons for over-ruling the Council. The quorum for the meeting was five.

4. The Secretary of State was also empowered by the Act to send despatches to India without consulting the Council, if he deemed them urgent. But this fact had to be notified to the Council. Despatches concerning war and peace or treaties with or policies towards states or princes could be marked *secret* and sent by the Secretary of State without consulting the Council. The Governor General and the Governors of Bombay and Madras could also mark their despatches *secret* in which case they could be seen by members of the Council only by the express permission of the Secretary of State.

5. The Secretary of State was empowered to constitute committees of his Council for the more convenient transaction of business, and to distribute departments of business among them. He could direct the manner in which all business was to be conducted.

6. The salary of the Secretary of State and the cost of his office were charged on Indian revenues. The Secretary of State was required to submit to Parliament annually a statement of the moral and material progress of India as well as Indian accounts. The

annual statement and the accounts provided occasions when Parliament could discuss Indian affairs.

7. The Act vested in the Crown the power of appointing the Governor General of India and the Governors of the Presidencies. The Governor General could appoint Lieutenant Governors with the approval of Her Majesty. Members of the Councils of the Governor General and the Governors could be appointed by the Secretary of State-in-Council.

8. The naval and military forces of the Company were transferred to the Crown. It was also provided by the Act that, except in an urgency and for preventing or repelling an invasion, Indian forces were not to be used for military operations outside India without the previous consent of Parliament.

These were the main provisions of the Act for the Better Government of India. Its main purpose was to transfer the full responsibility for the government of India to the Crown and to place the direct superintendence of the Indian Empire in one executive authority. This authority was the Secretary of State for India who was to have a seat in the Cabinet. His decision was to be final in all matters. The Council, which was to exercise moral control over him, was not given any initiative; it was to 'confine its attention to such questions of policy and matters of first class interest as were laid before it by its president, who in "secret" affairs could act by himself entirely apart from his councillors.\*

**The Place of the Act of 1858 in Indian Constitutional Development.**— In as much as the Act of 1858 marked the end of one era and the beginning of an other in the constitutional development of India, it was certainly a landmark in it. With it the rule of the Company came to an end, and the period of the government of India by the Crown began. Instead of being governed by the East India Company, India came to be governed by and in the name of the British Queen. But it should be borne in mind that the change it wrought was more formal than substantial; it marked a change in the form of government but made no difference in the substance of powers. In the words of Professor Dodwell, 'the plan which was adopted in 1858 was no newly found expedient, but rather a solution

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\* Cambridge History of India : Vol VI, page 211.

towards which men had been consciously working.\*

The changes introduced by the Act of 1858 can be said to be formal rather than substantial in nature because in a way it continued the old system of divided responsibility, of course with important modifications. The Secretary of State inherited the traditions and powers of the President of the Board of Control whom he replaced; there was not much difference between these two dignitaries. The President was always a Crown nominee and equal in status to the principal Secretaries of State; not infrequently he was a member of the Cabinet also. Similarly, the India Council inherited the traditions of the Court of Directors; the qualifications of a majority of its fifteen members were identical with those of at least 12 out of the 18 members of the Court of Directors; they must have served in India for at least ten years under the Company or the Crown. Just as the chief function of the Court was to block measures supposed to be inimical to the interests of their servants in India; similarly, the main function of the India Council was to protect and safeguard the interests of members of the Indian Civil Service.

From another point of view also the change can be said to be formal. As the Directors correctly pointed out in their Petition to Parliament that ever since Pitt's India Act a department of the Imperial Government, namely, the Board of Control, had 'full cognizance of, and power of control over, the acts of your petitioners in the administration of India'. Its President possessed and frequently exercised the power of requiring that before the Directors sent any despatch to India it must be submitted to and approved by him. The only difference between the old and the new scheme was that whereas under the former the initiative lay with the Directors and the President could only revise, modify, and approve or reject, under the new scheme the initiative passed on to the Secretary of State and the India Council became an advisory body. As has been stated in the previous chapter, the reduction of quorum for a meeting of the Court of Directors to ten had made it possible for the Crown nominees to constitute a majority if the meeting was thinly attended. The provision of the Act of 1853 that the Directors' patronage should cease and that the Board of Control should prepare rules for the examination of candidates for the

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\* *Ibid*, page 16.

Indian Civil Service, and that all natural born subjects of Her Majesty should be eligible to compete for it, and that all appointments should be made on the basis of the results of the examination, clearly show that the abolition of the Company was anticipated in 1853. It may also be mentioned that the Act of 1853 made the approval of Crown necessary for future appointments to the Councils of the Governor General and the Presidency Governors. It is thus clear that the Act of 1853 prepared the way for the assumption by the Crown of the responsibility for the government of India; the Act of 1858 merely completed the process begun by it. To repeat the words of Professor Dodwell, 'the plan which was adopted in 1858 was no newly found expedient, but rather a solution towards which men had been consciously working'. Throughout the whole period beginning with Pitt's India Act and ending with the Act of 1858 the powers and privileges of the Company gradually diminished and those of Parliament grew as a result of the various Acts passed by Parliament.

The idea that direct government by the Crown was the desirable, natural and inevitable end of the process set in motion by the Act of 1784 had made Presidents of the Board of Control more and more assertive with the passage of time; some of them pushed their powers to great length. Hence, though the Court of Directors retained by law the initiative and were able to arrest the proceedings of the Board of Control by inertia, St. George Tucker, for long the Chairman of the Court, was led to feel painfully that the authority of the Directors was gradually sinking.

Another observation may be made to show that the change wrought about by the Act of 1858 was more formal than real. Although the British Parliament had acquired the right to regulate the affairs of the East India Company since 1773, it could not intervene in Indian administration continuously. It was only at the time of the periodical renewal of the Company's charter that it could make an inquest in Indian affairs. These occasions were utilised for making an intensive study of them. The transfer of the government of India to the Crown gave Parliament full formal and legal control over Indian administration. It could question the Secretary of State on any matter, move resolutions on Indian affairs and introduce Bills. When the Secretary of State presented the audit report on Indian revenues

spent in England, scrutiny by members of Parliament could cover the entire field of Indian administration. The moral and material progress report submitted annually by the Secretary of State could also be made an occasion for discussion on them. Similar opportunities were present in the House of Lords also. But strange as it may seem, 'Parliament ceased to assert control at the very moment it had acquired it.' For various reasons it did not care to exert a continuous control over Indian administration. Domestic, Irish and foreign affairs made more and more insistent demands on the time and attention of members of Parliament. The theory was also developed that Indian affairs should be kept out of party politics. This meant that no political party cared to educate public opinion on the Indian question ; no political advantage could be had by discussing the handling of Indian administration. The Act of 1858 and the subsequent Acts did not devise any substitute for the prolonged inquests into Indian affairs which preceded the periodical renewals of the Company's charter. Furthermore, Lord Derby, who had succeeded Lord Palmerston as Prime Minister, held that "the government of India must be, on the whole, carried out in India itself", which meant that the preoccupied cabinets and the over-busy parliaments were content to give the Secretaries of State for India a free hand in shaping their policies. The latter in turn usually supported the authorities in India. All these developments tended to make parliamentary control over Indian administration shadowy and unsubstantial.

Finally, we may say that the Act of 1858 made no change in the structure of Indian government ; things continued to be administered here in the old way. No Indian was associated with the work of government and no representative institutions were introduced. In this respect the Indian Councils Act of 1861 has a better claim to be regarded as something of a landmark in our constitutional development ; it rectifies the shortcoming of its predecessor and may be regarded as supplementing it. Before turning to it, a few words may be added about the Royal Proclamation of Queen Victoria issued on November 1, 1858, which announced the assumption of direct responsibility by the Crown for the governance of Indian affairs.

**The Royal Proclamation.**— The Royal Proclamation is generally regarded as the charter of Indian liberties. It is couched in

beautiful and dignified language and breathes a spirit of magnanimity and justice and friendliness towards the Indian people. It is memorable for the pledges and assurances it gave to the Princes and people of India. It may be added that it designated the Governor General of India as Viceroy.

It assured the Princes of India 'that all treaties and engagements made with them by or under the authority of the Honourable East India Company are by us accepted and will be scrupulously maintained : and we look for the like observance on their part ..... We shall respect the rights, dignity and honour of Native Princes as our own.'

It assured the people of India that 'so far as may be, our subjects of whatever race or creed be freely and impartially admitted to offices in our services, the duties of which they may be qualified by their education, ability and integrity duly to discharge.'

It announced the adherence of the British Government to the principle of religious toleration in the following words : 'Firmly relying ourselves on the truth of Christianity, and acknowledging with gratitude the solace of religion, we disclaim alike the right and the desire to impose our convictions on any of our subjects. We do declare it to be our royal will and pleasure that none may be in anywise favoured, none molested or disquieted by reason of their religious faith or observances but that all shall alike enjoy the equal and impartial protection of the Law.'

It announced the desire of the Queen to respect the feelings of attachment of the people to their landed estates and to protect their rights connected with them while framing and administering laws. It ended with the following memorable words :

'When by the Blessings of Providence, internal security shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer its government for the benefit of all our subjects resident therein. In their prosperity will be our strength, in their contentment our security ; and in their gratitude our best reward. And may the God of all power grant to us, and to those in authority under us, strength to carry out these our wishes for the good of our people.'

The Proclamation was received with great enthusiasm in India and caused an outburst of loyalty to the British Crown. Its only fault was that some of the assurances and pledges made in it were not carried out in practice.

# PART II

## INDIA UNDER THE CROWN: 1858-1919

### Growth of Representative Institutions

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#### CHAPTER IV

##### THE INDIAN COUNCILS ACT, 1861

**Introductory.**— Though the changes introduced by the Act for the Better Government of India, 1858, were more formal than substantial, there can be no gainsaying the fact that it ushered in a new era in the constitutional development of India, the era of direct government by the Crown. It lasted till India became a Dominion in 1947. This period of nearly ninety years can be divided into three parts, the first of which extends from 1858 to 1921, the second from 1921 to 1947, and the third from 1947 to 1950. The first may be called the period of representative institutions; the second the period of self-governing institutions; and the third the period of dominion status. In 1950 British rule came to an end and India became a fully sovereign democratic republic.

The constitutional development during this entire period is marked by two features which were absent during the preceding epoch. In the first place, it was powerfully influenced by the rise and growth of a strong national movement under the Indian National Congress. Whatever reforms were introduced from time to time were designed to placate national opinion and meet the political situation as it was developing in the country. There was no such national movement during the Company's rule. The development of the constitution and the growth of national movement have therefore to be studied together. In the second place, it was equally influenced by the growth of communalism in the country. The system of communal representation was introduced in our country by the British politicians with a view to checkmating the rising tide of nationalism and in pursuit of their policy of Divide and Rule. It ultimately led to the partition of the country in 1947. One cannot

understand the history of British India from 1858 to 1947 without bearing in mind the interaction of these three forces : British Imperialism, Indian Nationalism, and Communalism.

The period between 1858 and 1921 is known as the period of representative institutions. As a result of the growth of political consciousness among the intelligentsia and the rise of the Indian National Congress there was a demand that the sons of the soil who had been studiously excluded from participating in the government of their own country should be given an effective share in it. They wanted adequate representation in the legislative councils and in the Indian Civil Service which dominated the administrative machinery. The British Parliament responded to these demands by enlarging the legislatures from time to time and increasing the number of Indian representatives in them, but without introducing an iota of popular or self-government. British control remained absolute and unquestioned in every branch of government— central, provincial and local. The executive remained wholly irresponsible to the legislature.

The era inaugurated by the Government of India Act of 1919 is known as the era of self-governing institutions. The Act gave Indians a measure of responsible government in the provincial sphere, but left the central government as irresponsible as before. The Act of 1935 proposed full responsible government in the provinces and partial responsibility at the Centre. We shall deal with the various Acts passed between 1858 and 1919 in this part, with the Government of India Act of 1919 in Part III, and with the Government of India Act of 1935 in Part IV.

With this brief introductory note we may pass on to the Indian Councils Act of 1861.

**The Indian Councils Act, 1861 :** (a) *Reasons for it.*— The view was held in certain quarters that lack of contact between the rulers and the ruled which was a necessary consequence of the exclusion of Indians from the legislature of the country was one of the causes of the Mutiny. Loyalists like Sir Syed Ahmad Khan complained that the Government of India had no means of knowing whether the laws made by them were advisable or not from the point of view of the Indian people ; there was no agency to convey the voice of the people to the government. There was, therefore, a likelihood of people misunderstanding the views and intentions of the government.

and misconstruing the Acts passed by them. He said: 'Had there been a native of Hindustan in the Legislative Council, the people would never have fallen into such errors (i. e., the Sepoy Rebellion).' Official opinion also was veering round to this view. Sir Bartle Frere, a member of the Viceroy's Executive Council, wrote as follows in a minute in 1860:

'The addition of the native element has, I think, become necessary owing to our diminished opportunities of learning through indirect channels what the natives think of our measures, and how the native community will be affected by them ..... Of the fact there can be no doubt, and no one will, I think, object to the only obvious means of regaining in part the advantages we have lost, unless he is prepared for the perilous experimenting of continuing to legislate for millions of people with few means of knowing, except by a rebellion, whether the laws suit them or not.'

Mr. Montagu and Lord Chelmsford also concluded that the terrible events of the Mutiny 'brought home to men's minds the dangers arising from the entire exclusion of Indians from association with the legislation of their country.\* It can therefore be said that the Mutiny convinced British statesmen of the necessity of taking non-official Indians and Europeans in the legislative councils of the country 'with a view to obtaining timely expressions of the feelings and sentiments of the members of the outside public concerning measures proposed to be taken by Government.'† The chief purpose of the Act of 1861 was to reconstitute the legislative machinery in India with a view to associating Indians with it. The tendency of the legislature set up under the Act of 1853 to assume the character of a miniature parliament assembled for the purpose of inquiry into and redress of grievances (which was contrary to the intentions of Parliament and was utterly disliked by the Government of India), and the dissatisfaction of Madras and Bombay with the great pre-ponderance of authority which Bengal enjoyed over them in the Legislative Council were other reasons which necessitated a reconstitution of the legislative machinery. It may also be added that Lord Canning had written to Sir Charles Wood, Secretary of State for India, in January, 1861, suggesting the introduction of the portfolio system in his Executive Council, by parliamentary enactment. The Indian Councils Act of 1861 also dealt with the reorganisation of the

\* *Report on Indian Constitutional Reforms*, sec. 59.

† Cowell : *History and Constitution of the Courts and Legislative Authorities in India*, page 83.

executive councils. The preamble to the Act refers to its dual object.

(b) *Provisions of the Act.*— In regard to the constitution of the Executive Council of the Governor General the Act provided that it was to consist of five ordinary members. Three of them were to be appointed by the Secretary of State for India with the concurrence of the India Council from among persons having at least ten years' service in India under the Company and the Crown or under the Crown. If any one of the persons so appointed was in the military service of the Crown at the time of appointment, he was to give up that service. Of the two remaining members who were to be appointed by the Crown one was to be the law member and the other the finance member. For appointment as the law member a person must have been either a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland of not less than five years standing. The Commander-in-Chief was to be the extraordinary member of the Council and to have rank and status next to the Governor General. All the members were to hold office for five years. The Governor General was authorised to make rules for the conduct of its business. This enabled him to introduce the portfolio system. It should be remembered that the introduction of the portfolio system was implied in one member of the Council being designated as the Law member, another as the Finance member, and a third as the Military member.

The Act of 1861 empowered the Governor General to enlarge his Council for purposes of making law by adding not less than six and not more than twelve members. Not less than one half of the members so appointed were to be non-officials (some of them Indians). These non-official members were to be appointed for a two year term. Thus for the first time Indians were to be associated with the work of legislation. This was a momentous change made by the Act of 1861. But it must be remembered that the non-official members were to be *nominated* by the Governor General; they were *not to be elected* by the people. Under the conditions then existing even this was a great step forward. The choice of the right type of Indians by the Governor General would have enabled him to come into contact with real Indian opinion. But the non-official Indians usually appointed to the Council were either the Indian Princes or their Diwans, or big zamindars or retired officials; they

were not the natural leaders of the people who could really reflect and mirror their views and aspirations. They showed no eagerness to attend the meetings of the Councils ; nay, in the words of Punia, 'they showed the utmost reluctance to come and the utmost hurry to depart'. Perhaps the reason of their disinclination to participate in the work of the Councils lay in the extremely restricted functions of the latter, and not in the climate of Calcutta as was suggested by Sir Henry Maine. In this connection it must be noted that the Act 'rebuked the precocity of the council established under the Act of 1853, which had modelled its procedure on Parliament and shown what was considered as an inconvenient amount of independence by asking questions about and discussing the propriety of the methods of the executive Government. The functions of the new councils were strictly limited to legislation. They were expressly forbidden to transact any business except the consideration and enactment of legislative measures, or to entertain any motion, except a motion for leave to introduce a Bill or having reference to a Bill actually introduced.\*'

A few words may be added about the powers of the new legislative council. It was authorised to make laws for all persons, Indians, Britishers, and foreigners, and for all courts of justice, and for all places and things within the territories of British India. But no measures affecting the public debt or revenues of India, the religion or religious rights and usages of any class of British subjects in India, the discipline or maintenance of military or naval forces, and the relations between the Government and the Indian States could be introduced in it without the previous sanction of the Governor General. It could not pass any law repealing or amending any provision of any Act passed by Parliament affecting India. In short, the limitations placed on its legislative authority were similar to those laid down by the Act of 1853.

The assent of the Governor General was necessary for every Act passed by the Council. The Governor General had the power to give his assent or withhold it, or reserve any Act for the pleasure of ~~the~~ <sup>His</sup> Majesty. A bill assented to by the Governor General could be disallowed by the Crown.

The Act of 1861 gave a new power to the Governor General,

\*Report on Indian Constitutional Reforms, page 40.

the power of issuing ordinances on his own authority and independently of the newly established legislative council. An ordinance could remain in force for a period of six months, unless disallowed by the Crown or repealed by law or another ordinance earlier. The reason for issuing the ordinance was to be communicated to the Secretary of State. This power of issuing ordinances was to prove of great use subsequently.

Besides providing for the addition of a new member to the Governor General's Council and its reorganisation, and for the addition of non-official members to it for purposes of legislation, the Act of 1861 took the first step towards legislative devolution. It would be recalled that the Act of 1833 had taken away the power of making rules and regulations for the peace and good government of their respective territories from the Governors in Council of Madras and Bombay, and centralised the power of making laws for the whole of British India in the Governor General in Council. By providing for the establishment of local legislatures on the central model the Act of 1861 restored to Bombay and Madras the powers of legislation they had previously enjoyed. Their Governors were required to expand their Councils by the addition of the Advocate General of the Presidency and of not less than four and not more than eight other members of whom not less than one half were to be non-officials. Their term was fixed at two years.

The local legislatures had limited powers. As in the case of the central legislature, their function was restricted to legislation only; no other business could be conducted by them. Even in the field of legislation their powers were restricted in several ways. They could make laws for the peace and good government of their territories, but could not make any law affecting (i) the public debt of India, (ii) custom duties or any other tax imposed by the authority of the Government of India, (iii) currency and coinage, (iv) conveyance of letters by post office, etc., (v) the religion or religious rites and usages of any section of the community, and (vi) the Indian Penal Code. Laws made by them required the assent of the local Governor and of the Governor General in Council before they could be enforced. The Governor General could refuse his assent to any law. This was a departure from the old practice. The rules and regulations made by the Governors in Council of

Bombay and Madras before 1833 did not require the assent of the Governor General. The point to be understood and remembered is that the restoration of legislative powers of the local governments was a restoration with a vital difference; the new legislature did not enjoy as complete powers of legislation as the Governors in Council did before 1833; they were subordinate legislative bodies. Whatever laws were made by them were made with the previous approval of the appropriate department of the Government of India. Before approving the legislative policy of a provincial government, the Government of India could suggest modifications and insist that they should be incorporated in the bill. The provincial government was not free to accept any amendment to a bill under discussion in the legislative council at any stage without the previous consent of the central government. Even then, a bill passed by a local legislature could not become law unless it received the assent of the local governor (or lieutenant governor) and the assent of the Governor General in Council. Thus, though the Act of 1861 restored legislative authority to the provincial governments, it saved the country from the chaos that prevailed before 1833 by subordinating them to the Central Government.

It should be borne in mind that the Act of 1861 established local legislatures only at Bombay and Madras, and nowhere else. It however empowered the Governor General in Council to establish, by proclamation, a similar legislative council for Bengal, and also to establish, at his discretion, similar bodies in the North Western Province (Agra) and the Punjab. Legislative Councils were established in Bengal, North Western Province and the Punjab in 1862, 1886, and 1897. These Councils were to consist of the local Lieutenant Governor and a certain number of nominated councillors. The Act also empowered the Governor General in Council to constitute new provinces for legislative purposes and appoint Lieutenant Governors, and to alter the boundaries of existing provinces.

In so far as the Act of 1861 decried the tendency of official European members added to the Governor General's Council for purposes of law making under the Act of 1853 to make the Legislative Council something like a miniature Parliament, and restricted the functions of the new legislative bodies to law-making, and thereby prevented the development of parliamentary ideas in the country,

it has been condemned as a retrograde measure, as a step backward and not a step forward. We do not think it was a retrograde step ; it did not take away any powers which were conferred upon the expanded council by the Act of 1853. It was never the intention of British statesmen in 1853 that the official members to be added to the Governor General's Council for purposes of law making should convert the council into a parliament and discuss the propriety of executive steps taken by the government. It was a premature step on their part. Thus there can be no question of taking away what was never given. Parliamentary methods can develop only under a congenial atmosphere ; the conditions prevailing in India in 1861 were not favourable for their growth.

The achievements of the Act of 1861 are thus summed up by the authors of the *Report on Indian Constitutional Reforms* :

'The Act of 1861 thus closes a chapter. Its main interest has lain in the gradual construction and consolidation of the mechanical framework of government. The three separate presidencies have come into a common system ; much of the intervening spaces have been brought under British rule ; the legislative and administrative authority of the Governor General-in-Council has been asserted over all the provinces, and extended to all their inhabitants ; and the principle of recognising local needs and welcoming local knowledge has been admitted, so that local councils have been created or re-created for the purposes of advice. But, partly at least out of anxiety to prevent the authority of the executive from being impaired (as in Warren Hastings' days) by any other rival institution without any administrative responsibility, it has been expressly declared that the councils are a mere legislative committee of the Government and are not the germ of responsible institutions. We think it worth noting how the innate tendency of even a few official Englishmen, assembled in a simulacrum of a legislature, to convert it into a parliamentary body positively contributed to retard the introduction of parliamentary ideas for the benefit of the people of India as a whole.'

**Nature of the Legislative Councils.**— We would conclude our account of the Act of 1861 with a description of the nature of the legislative bodies set up under it. These bodies were not legislatures in the strict sense of the term either in their constitution or in their functions. A parliament consists of persons elected by the people to make laws and exercise control over the government on behalf of the people ; it is a deliberative body and discusses the policies of the government and seeks redress of the grievances of the people. Obviously, the legislative councils were not designed for this purpose ; they were meant to make the government of India work well. Each one of them may be regarded as a committee by

means of which the executive obtained advice and assistance in legislation. Their character is described by Professor Cowell in the following words :—

'The character of these Legislative Councils was simply this, that they were committees for the purpose of making laws, committees by means of which the Executive government obtained advice and assistance in their legislation, and the public derived the advantage of full publicity being ensured at every stage of the law making process. Although the Government enacted the laws through its Council, private legislation being unknown, yet the public had a right to make itself heard and the executive was bound to defend its legislation..... . Such laws were in reality the orders of the Government, but they were made in a manner which ensured publicity and discussion, were enforced by the Courts and not by the Executive, could not be changed but by the same deliberate and public process as that by which they were made, and could be enforced against the Executive or in favour of individuals wherever occasion required.

'The Councils were not deliberative bodies with respect to any subject but that of immediate legislation. They could not inquire into grievances, call for information, or examine the conduct of the Executive. The acts of the Executive could not be impugned, nor could they be properly defended in such assemblies, except with reference to the particular measure under discussion.\*

**Changes made between 1861 and 1892.**— The legislative system established under the Act of 1861 remained in force, with some changes made by some subsequent Acts till it was superseded by the Indian Councils Act of 1892. The alterations made by this Act would be examined in a subsequent chapter. Here we may note some of the minor changes made by some Acts passed between 1861 and 1892. The Government of India Act of 1865 extended the legislative powers of the Governor General in Council to all British subjects in Indian States ; the Indian Councils Act of 1869 empowered the Governor General in Council to make laws for all Indian subjects of the British Crown in any part of the world ; the Indian Councils Act of 1871 extended the powers of the provincial legislatures slightly.

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\* Cowell : op. cit., pages 95-96.

Between themselves, the Acts of 1858 and 1861 gave India a framework of government which lasted till the end of British rule in the country, subject of course to important modifications introduced by later Acts. The first gave a single executive to conduct her affairs in England, and the second a unified central executive and a central legislature to provide good and ordered government for the whole country. The army was also thoroughly reorganised by another Act. But a big empire requires something more than an army, a unified government and a unified legislature for its maintenance and consolidation ; it also needs a uniform system of courts, a uniform civil and criminal law, and a uniform civil and criminal procedure. In other words, the Acts of 1858 and 1861 accomplished but a part of the work of reorganisation and consolidation necessary for an empire ; they did not introduce any reforms in the judicial sphere. This lacuna was made good by the Indian High Courts Act of 1861 which 'closed the series of constitutional statutes consequent on the transfer of the government of India to the Crown.'\* A brief account of its main provisions is thus necessary.

**The Indian High Courts Act, 1861.**— The necessity of reforming the judicial organisation had been felt long before the transfer of the government of India to the Crown. The Charter Act of 1833 had declared that it was expedient to have a general system of judicial administration to which all subjects of the Crown, Indians as well as Europeans, should be subject. The reorganisation of the judicial system had, however, to be postponed till laws and procedures were codified. The Civil Procedure Code was put on the statute book in 1859, the Indian Penal Code in 1860, and the Criminal Procedure Code in 1861. The way for the Indian High Courts Act was thus made clear.

Under the Company two different types of courts applied two different sets of laws. On the one side were the three Supreme Courts at Calcutta, Madras and Bombay, established by the Crown under parliamentary authority, exercising original jurisdiction over European British subjects in the three Presidency towns and applying British law. On the other side, there were the Sadar Diwani and Faujadari Adalats and a number of mofussil civil and criminal courts set up by the Company for trying civil and criminal cases according

\* Ilbert : *The Government of India*, page 104.

to local laws. The Charter Act of 1813 had tried to mitigate the inconvenience and hardship caused by the fact that the Supreme Courts had exclusive jurisdiction over European subjects residing outside the Presidency towns. Still the hardships existed. It was in order to remove the evils arising out of the duality of laws and of courts that the Indian High Courts Act was passed.

The Act provided for the abolition of the existing Supreme and Sadar Adalat Courts, and their replacement by new High Courts to be established by the Crown at Calcutta, Madras and Bombay. Each of these High Courts was to consist of one Chief Justice and not more than fifteen other judges, of whom not less than one third (inclusive of the Chief Justice) were to be members of the English, Irish or Scottish bar, and not less than one third to be members of the Indian Civil Service. The remaining judges could be chosen from among persons who might have held judicial office in India for at least five years, or had practised as a High Court Advocate for at least ten years. Indians were thus made eligible for appointment as High Court Judges. The judges were to be appointed by the Crown and were to hold office during Her Majesty's pleasure. The jurisdiction of the High Courts was to be defined by the Letters Patent establishing them. They had both original and appellate jurisdiction. The original jurisdiction was inherited from the old Supreme Courts, and the appellate from the old Sadar Adalats which they replaced. The High Courts were also given the power to superintend all the courts subject to their appellate jurisdiction, and to issue general rules for regulating their practice and procedure. Charters were issued by the Crown in 1862, constituting the High Courts at Calcutta, Madras and Bombay.

The Act empowered the Crown to create and establish a High Court of the same type as the High Courts for the three Presidencies in and for any portion of Her Majesty's territories in India, not included within the limits of the local jurisdiction of another High Court. It was in the exercise of this power that a High Court for the North Western Province was established at Allahabad in 1866.

The constitutional importance of the various Acts of 1858 and 1861 is well brought out in the words of Sir Courtenay Ilbert: 'The Indian High Courts Act of 1861 closed the series of constitutional statutes consequent on the transfer of the government of India

to the Crown. Until the end of the nineteenth century the Acts of Parliament subsequently passed for India did little more than amend, with reference to minor points, the Acts of 1858 and 1861.\*

**The Government of India Act, 1870.**— Before passing on to the next landmark in the growth of the legislature in India, namely, the Indian Councils Act of 1892, a few words may be added about an important modification in the machinery for legislation made by the Government of India Act of 1870.

It may be mentioned that the Act of 1861 took away from the Governor General in Council the power of making rules and regulations for the non-regulation provinces by executive orders. Areas and districts inhabited by backward people to which it was deemed improper to apply the administrative and judicial regulations of Cornwallis were known as non-regulation areas. Their administration was the special concern of the Governor General in Council. Assam, Arakan and Tenasserim, Jalpaiguri and Darjeeling districts and the hill tracts of Chittagong were among the non-regulation provinces and districts. The Act of 1870 practically restored the power to the Governor General-in-Council. It empowered him to make laws for these less advanced areas in a summary manner. The governor-in-council, lieutenant governor, or lieutenant governor-in-council, or the chief commissioner of a province might at any time submit to the Governor General-in-Council drafts of regulations for the peace and good government of areas declared 'non-regulation' areas by the Secretary of State-in-Council. These drafts, when approved and assented to by the Governor General-in-Council and published in the Gazette were to have the same force as if they were passed by the legislative council.

We may now pass on to the Indian Councils Act of 1892.

\* Courtenay Ilbert : *Government of India*, page 104.

## CHAPTER V

### THE INDIAN COUNCILS ACT, 1892

**Introductory.**— During the rule of the East India Company there were two important factors which exercised some sort of check on the government of India and constituted a safeguard of Indian interests. One was the wholesome jealousy felt by Parliament towards the Company as a privileged corporation. The other was the necessity for the renewal of the Company's charter at the end of every twenty years which was made an occasion for a searching inquiry into Indian affairs. Every renewal of the charter was accompanied by some important reform and concession suited to the progressive condition of Indian affairs. But after the transfer of the government of India to the Crown both these safeguards disappeared with the result that parliamentary control over Indian affairs became a sham and a delusion, and no attempt was made by Parliament to inquire into them and no reforms were introduced for thirty long years after the Act of 1861. Parliament virtually ignored India during this span.

**Changing face of India.**— But conditions in India were undergoing a swift change; a great social and religious reform movement had come into being as a result of the activities of men like the great Raja Ram Mohan Roy who has been appropriately and justly described as the Prophet of Indian Nationalism, Swami Dayanand Saraswati, and Mrs. Annie Besant. The striking social and religious reforms they introduced paved the way for the emergence of the national movement under the Indian National Congress. Political awakening was helped and stimulated by the spread of western education which was accelerated by the establishment of Universities at Calcutta, Bombay and Madras, the influence of the vernacular press which had become free, the progress of railways and telegraphs, and the influx of new ideas from the West in various ways. The people were filled with new aspirations. Public opinion had begun to grow and become strong. In a memorandum sent to the Secretary of State in December, 1882, Lord Ripon wrote as under :

'A movement has begun which will advance with greater rapidity and force every year. Such a condition of affairs is one in which the task of govern-

ment, and specially practically despotic government, is beset with difficulties of no light kind ; to move too fast is dangerous, but to lag behind is more dangerous still ; and the problem is how to deal with this new born spirit of progress, raw and superficial as in many respects it is, so as to direct it into a right course, and to derive from it all the benefits which its development is ultimately capable of conferring upon the country, and at the same time to prevent it from becoming, through blind indifference or stupid repression, a source of serious political danger.'

He advocated the continuation of the policy of Lord Mayo in the sphere of local self-government and the association of Indians and non-official Europeans in the administration of local affairs.

The movement to which Lord Ripon made reference and which he expected to advance with great rapidity every year was the National Movement. The Indian National Congress was formed in 1885, and at its annual sessions it began to reflect the growing political consciousness of the people of India and to demand political reforms. In his presidential address delivered at the very first session of the Congress held at Bombay in the last week of December, 1885, Shi i Womesh Chundra Bonnerjee observed that the desire of the people of India to be governed 'according to the ideas of government prevailing in Europe was in no way incompatible with their thorough loyalty to the British Government. All that they desired was that the basis of government should be widened and that the people should have their proper and legitimate share in it.' In his presidential address delivered at the second session of the Congress held at Calcutta in 1886, Dadabhai Naoroji, who came to be affectionately and reverently called the Grand Old Man of India in the later years of his life, demanded the introduction of elective element in the legislatures of the country. He said that whatever Acts the Governments 'pass do not quite please us ; we, whether rightly or wrongly, grumble and grumble against the Government, and the Government only. It is true that we have some of our own people in Councils. But we have no right to demand any explanation even from them ; they are not our representatives, and the Government cannot relieve themselves from any dissatisfaction we may feel against any law we do not like.'

In short, from its very inception the National Congress took up the question of reform of the legislatures which, as set up under the Act of 1861, had proved to be most inadequate and disappoint-

their respective provinces. He therefore developed the principle of financial devolution further. He recommended that provincial governments should be given a more complete and independent control of the provincial revenues, and the powers of supplementing and increasing local funds by provincial taxation.

In the third place, the Despatch recommended that the budget prepared by the Government of India should be thrown open to discussion in the Viceroy's Legislative Council. He did not mean that votes should be taken in regard to the various items of the budget, or that heads of expenditure should be subjected to any detailed examination by the Council, but 'simply that an opportunity should be given for a full, free, and thorough criticism and examination of the financial policy of the Government.'

In view of the fact that there existed no medium through which the Government could 'explain its policy, correct a wrong impression, or controvert a false statement', Lord Dufferin recommended in his Despatch that 'under proper restrictions to be laid down by the Viceroy', the members of the Supreme Legislative Council 'should be permitted to ask questions in reference to current matters of domestic, as distinguished from those of imperial interest, that may have attracted public attention.'

While recommending a liberal policy so far as the admission of a larger number of Indians to the legislative councils, methods of representation, and expansion of their functions were concerned, Lord Dufferin expressly repudiated any desire to introduce parliamentary institutions in the country. He said :

'It is necessary that there should be no mistake as to the nature of our aims, or of the real direction in which we propose to move. Our scheme may be briefly described as a plan for the enlargement of our Provincial Councils, for the enhancement of their status, the multiplication of their functions, the partial introduction into them of the elective principle, and the liberalization of their general character as political institutions. From this it might be concluded that we were contemplating an approach to English parliamentary government, and an English constitutional system. Such a conclusion would be very wide off the mark ; and it would be wrong to leave either the India Office or the Indian public under so erroneous an impression ..... The executive that represents her (Britain's) imperium in India is an executive directly responsible, not to any local authority, but to the sovereign and to the British parliament. Nor could its members divest themselves of this responsibility so long as Great Britain remains the paramount

administrative power in India.\*

Though the Despatch was sent in 1888, it was not before 1892 that the Indian Councils Act embodying its main recommendations was passed. The reason for this delay was the preoccupation of the House of Commons with the Irish problem and the opposition of the Conservative Government to the system of election. Discussion on the Bill in Parliament centred round the principle of election. Its adoption was recommended, as we have noted already, by Lord Dufferin, and supported by men like Lord Northbrook and Lord Ripon. It was vehemently opposed by Lord Cross, Secretary of State for India in the second government of Lord Salisbury. He argued that it would be 'unwise to introduce a fundamental change of this description without much more positive evidence in its favour than was forthcoming.' It was also opposed by Mr. Curzon, Under Secretary of State for India, and by Sir R. Temple, an ex-Governor of Bombay. The controversy was ended by the adoption of a compromise formula which recommended a method of representation approximating to that of election. It empowered the Government of India to make rules, with the approval of the Secretary of State, as to the conditions under which nominations of additional members were to be made. The idea was to adopt a method of representation which might *approximate* to that of election. The plan adopted was that the Governor General, the Governor, or the Lieutenant Governor, as the case may be, would fill some of the seats by simple nomination, and for a majority of them invite recommendations from bodies like municipalities, universities, chambers of commerce and religious associations. These bodies were to elect, select, or delegate their representatives, and persons so recommended were in practice accepted as a matter of course by the authorities. The process thus virtually became election, though it was not called by this name. The process of election was however different from that prevailing in Great Britain; territorial constituencies did not exist at that time in India; conditions were not ripe for their creation.

We may now proceed to describe the provisions of the Act of 1892.

\* The extracts from the Despatch are taken from *Indian Constitutional Documents*, by A. C. Bannerji.

**Provisions of the Act of 1892.**— The Indian Councils Act of 1892 achieved three things: it increased the number of additional members in the Central and Provincial Legislative Councils; though carefully eschewing the term 'election', it introduced the elective principle in the guise of nomination on the basis of recommendation; and it enlarged the functions of the Councils.

The Governor General's Legislative Council was to contain not less than ten and not more than sixteen nominated members (as contrasted with the minimum of six and the maximum of twelve under the Act of 1861). This increase was indeed 'very paltry and miserable' as Mr. Schwana, a member of the House of Commons, characterised it. Of the sixteen additional members ten were to be non-officials of whom four were to be appointed on the recommendations of the non-official members of the four provincial legislatures, and one on the recommendation of the Calcutta Chamber of Commerce; while the remaining five were to be nominated by the Viceroy to represent landed and other interests in the country. The number of additional members was to be not less than eight and not more than twenty in the case of Bombay and Madras Councils. The maximum for the Council of Bengal was fixed at twenty and for that of North Western Province 15. The majority of the members added to the provincial councils were to be non-officials; they were to be nominated on the recommendations made by municipal and district boards, chambers of commerce, landlords and universities. Lord Dufferin's principle that grasp of the supreme administration should in no case be weakened was fully observed by retaining official majorities in all the legislatures.

About the extent to which the elective principle was introduced by the Act we have already said enough. Technically all the additional members were *nominated* by the Governor General, the Governor, or the Lieutenant Governor as the case might have been, but in so far as in a majority of cases only those persons were nominated who were recommended by certain bodies or corporations, the principle of election was introduced. It was however *indirect election*; only the member recommended by the Calcutta Chamber of Commerce can be said to have been directly elected. In the acceptance of the principle of election (though indirectly) lies the momentous character of the reforms introduced by the Act of 1892.

The Act enlarged the powers of the legislatures appreciably. They were authorised to discuss the annual budget, but without the right to vote on it or to divide the house on any issue connected with it. This was a great gain; it enabled the non-official members to discuss and criticise the financial policy of the government, and also gave the Government an opportunity to defend and explain their policy and remove misunderstandings. The Act also gave the members the right to ask questions on matters of public interest, but had no power to ask supplementary questions. As a result of these powers the Councils became something more than mere legislative or advisory bodies as they were under the Act of 1861.

The advance made by the Act of 1892 on that of 1861 is thus described by the authors of the Report on Indian Constitutional Reforms: 'Whereas in 1861 men said: "We had better hear what a few Indians of our choosing have to say about our laws", they said in 1889: "Our laws have positively benefited by Indian advice and criticism; let us have more of it, and if possible let the people choose the men they send to advise us".'

**Evaluation of the Act.**— These gains are bound to appear trifling to us in retrospect; they failed to satisfy public opinion at that time also. It was pointed out that the Councils were not sufficiently representative of the people and that the powers granted to them were hedged in by many restrictions. The provisions of the Act were criticised by the Congress at several successive sessions. Mr. Ferozeshah Mehta, President of the 1890 session held at Calcutta, described the Bill introduced by Lord Cross as 'most halting and unsatisfactory'. He compared it to a 'most superb steam engine in which the necessary material to generate steam was carefully excluded'. His charge was that in the absence of the 'living forces of the elective principle' which alone could properly work them, the rights of interpellation and of discussion of the budget had become shadowy. Mr. Surendra Nath Bannerji, who presided at the 1895 Poona session, also subjected the Act to trenchant criticism, and declared that the Congress was not satisfied with it. His charge was that it had failed to realise the anticipations of Indians and was not even consonant with the declaration made by members of Parliament in both the Houses. Lord Salisbury wanted the Act to give representation not to small sections of the people but 'to the living strength

and the vital forces of the whole community.' Bannerji asked: 'Could seven elected members adequately represent the living strength and the vital forces of a whole community of 70 millions of Bengalis?' He demanded an appreciable increase in the number of elected Indians. In view of the standing official majorities in all the Councils Mr. Bannerji found no reason for the restrictions on discussion on the budget and on interpellations; he demanded their removal.

Inspite of these shortcomings the Act of 1892 was a decided advance upon that of 1861; the true significance of its gains should not be minimised. The following assessment of the Act made by a critic seems to be apt: 'It was an attempt at a compromise between the official view of the Councils as pocket legislatures and the educated Indian view of them as embryo parliaments. While no efforts were made to enlarge the boundaries of the educated class, to provide them with any training in responsible government, or to lay the foundations of a future electorate to control them, the Act deliberately attempted to dally with the elective idea.'\*

The Act of 1892 was not meant to mark the beginnings of parliamentary system in our country; on this point Lord Dufferin was very specific. This is why the official majority was maintained everywhere; the Councils were not given the smallest power to control the executive. Nevertheless, it was a definite milestone on the road that led to the establishment of parliamentary government at a later stage. It was the seed sown in 1892 which at a much later date sprouted and grew into a big tree inspite of the attempt made by the Indian bureaucracy to sterilise and kill it. The Act gave opportunities to distinguished Indians like Gopal Krishna Gokhale and Ferozeshah Mehta to do splendid work in the Supreme Legislative Council; to S. N. Bannerji and Anand Mohan Bose in Bengal; to C. Vijairaghavachariar and N. Subbaran Pantulu in Madras; to Sir Chimanlal Setalvad and Sir Gokuldas Parekh in Bombay, and Pundit Madan Mohan Malaviya in the United Provinces. In the words of Mr. C. Y. Chintamani 'it would be a mistake to belittle the value of the work of these and other members because it did not always or often bear fruit. For it is certain that if the majority of them had been failures, if they had betrayed a lack of

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\* Quoted by Punniah, *op. cit.*, page 114.

capacity or of a sense of responsibility, if they had not acted in the best interests of the people, there would have been no Morley-Minto Councils in after-years.\*

In view of the fact that the growth of a strong national movement in the country led to the enactment of the Indian Councils Act of 1892 and exercised great influence on subsequent constitutional development, it is necessary to give a short account of its origins and growth before dealing with the Indian Councils Act of 1909. The next chapter is devoted to it.

\* C. Y. Chintamani : *Indian Politics Since the Mutiny*, page 26.

## CHAPTER VI

### THE GROWTH OF INDIAN NATIONALISM

**Introductory.**—(It is a highly significant fact that while India had to wait for more than thirty long years before British Parliament thought it fit to reform the legislative councils set up under the Indian Councils Act of 1861, the growing tempo of political life in India forced British authorities to supersede the Indian Councils Act of 1892 by the Indian Councils Act of 1909 within a space of about seventeen years. There would have been no Morley-Minto Reforms, had there been no National Congress to organise and lead a strong national movement in the country and no extremist section in the Congress demanding a more vigorous line of action than the method of making representations. For a proper appreciation of the circumstances which led to the Morley-Minto Reforms a knowledge of the political awakening among the people and of the political unrest in the country is absolutely necessary.)

**Factors leading to the birth of the National Congress.**—(In his booklet, *Britain and India*, Professor Coupland observes that Indian Nationalism was born 'when the Indian National Congress assembled for the first time in Bombay in 1885'. In as much as the rise and growth of nationalism in India is synonymous with the rise and growth of the Indian national Congress, the statement of Professor Coupland is unexceptionable. It, however, ignores one very vital fact which must always be borne in mind if the true character of Indian Nationalism is to be understood. The Indian national movement was not an isolated phenomenon; it was a part of the Renaissance of India which may be said to have begun with Raja Ram Mohan Roy, and cannot be regarded as over yet. As Dr. Zacharias points out, the Renascence of India is fundamentally a matter of the spirit; it first manifested itself in the form of a general Reform Movement and 'produced striking religious and social reforms long before it issued in a movement for political emancipation.\* This means that the various religious and social reform movements which seized the Hindu community

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\* Zacharias : *Renaescent India*, page 15.

in the first three quarters of the last century and the national movement which took a definite and organised form with the establishment of the Indian National Congress in 1885 form part of an integral whole ; the latter cannot be studied apart from the former which prepared the soil for its emergence and impressed a definite character on it. This is the reason why writers like Dr. Zacharias and Dinabandhu Andrews preface their accounts of the rise and growth of the national movement in India with a brief statement of the work of the Brahmo Samaj, the Arya Samaj, the Theosophical Society, and the Ramakrishna Mission and other reform movements which constitute, in and between themselves, the Hindu spiritual and cultural renaissance, and have materially contributed to the national awakening. We shall also devote some space to their study.

The second thing to be remembered in connection with the growth of Indian Nationalism is that it is indissolubly associated with the rise and growth of the Indian National Congress. This should not be taken to mean that the activities of no other political party had any effect on the course and character of the national movement ; this would be obviously untrue. The growth of communalism in our country profoundly affected the national struggle for freedom ; and so did the emergence of the terrorist movement, though to a much smaller degree. Neither of them forms part of or is connected with the Indian National Congress. Nevertheless, it can be maintained that it was the work of the Indian National Congress to have made the people conscious of their national unity, conscious too of the insult to national freedom involved in foreign rule, and to have organised and led the struggle for national freedom and ultimately to have won it. In this sense, and in this sense alone, one can say that the story of the rise and growth of the Indian National Congress is the story of the rise and growth of Indian Nationalism.)

**Factors which gave rise to the National Movement.—**(In every country in the world the national movement is the cumulative effect of the operation of a number of influences operating over a longer or comparatively shorter period. In India the period was fairly long ; it may be said to cover nearly half a century preceding the establishment of the National Congress in 1885. It was long because of the peculiar circumstances prevailing in the country ;

namely, the demoralising effect of foreign despotic rule lasting for several centuries. The forces which prepared the soil for it and materially contributed to its emergence were also more varied and of a somewhat different character from those usually found in other countries.) In this section we would discuss at some length these factors, (the more important of which are the religious awakening in the country, the spread of English education, the economic and political consequences of British rule, the rapid improvement of the means of communication, the rise of the Indian Press, the various events which took place in the seventies of the last century, and political movements in western countries.)

(i) **The Religious Awakening.**— As has been pointed out above, (the religious and social reform movement, which started with Raja Ram Mohan Roy and found its latest and most notable leader in Mahatma Gandhi, and the national movement are parts or stages of the great Indian Renaissance. One of the most important characteristics of Indian Nationalism is its basis and inspiration in religious awakening.) When Mahatma Gandhi declared that politics bereft of religion are immoral, and based his movement on Truth and Ahimsa, he only made explicit what was implicit in the preceding phases of Indian nationalism. (Apart from this, it should be remembered that it was the spiritual and cultural renaissance of Hinduism as represented in the Brahmo Samaj, the Arya Samaj, the Theosophical Society and the Ramakrishna Mission, etc., that made the national awakening possible ; in the absence of the former the latter could not have taken place.) It is necessary to understand the manner in which the religious and social reform movements paved the way for the emergence of a strong and virile nationalism.

(The hundred years immediately preceding the establishment of the Brahmo Samaj in 1828 by Raja Ram Mohan Roy have been rightly described as the Dark Age of India. In this period Indian cultural and national life had touched a very low ebb ; Hinduism had almost wholly lost the vitalising power and spark of life which, in the past, had produced a glorious and marvellous culture. The people of India had forgotten the sublime truths of the Upani-shads and the Vedanta ; their spiritual yearning had been replaced by a soulless observance of dogmas and an enervating adherence to empty rituals. Instead of worshipping one Supreme God, the

Hindus had taken to the worship of innumerable gods and goddesses, and an idolatry of low type had taken the place of the contemplation of impersonal Brahma. Evil practices like compulsory sati, enforced widowhood, untouchability, girl infanticide, and an extremely rigid caste system recognising thousands of castes and sub-castes were eating into the vitals of the social body. Culturally she stood stupefied against the apparently superior civilisation of the western conqueror. The process of internal disruption set going by the loss of political power was accelerated by the effects of western education which had made educated Indians conversant with materialistic and atheistic findings of nineteenth century European scientists. (To these) seriously disquieting and highly disturbing influences were added the activities and preachings of Christian missionaries who poured ridicule on Hindu religious beliefs and practices. Their official position lent glamour to their preaching, and together with winsome manners and, in many cases, with genuine love for the people of the country, they were winning converts to their faith by thousands. The citadel of Hinduism was badly shaken, and it seemed to be on the verge of extinction.\* (Under such conditions there could be no political awakening; the stupefying influence of contact with a virile and apparently superior civilization had first to be counteracted and the faith of the people in themselves and their glorious heritage revived, before any national awakening could be possible.) This is exactly what the various religious and social reform movements named above achieved.

(Raja Ram Mohan Roy, the founder of the Brahmo Samaj, realised that if Hinduism was to be made capable of successfully withstanding the onslaughts made on it by Christianity, it should be pruned and reformed. He wanted to bring his countrymen back to the purity of ancient Hinduism, and for this purpose founded the Brahmo Samaj. Its central conception was that of a 'Formless God', the eternal, unsearchable and immutable being who is the author and preserver of the Universe. He alone deserves to be worshipped and no other god or goddess. The Brahmo Samaj repudiated idol worship, and preached religious toleration. It also stood for social and educational reform. It worked for the abolition of evil practices like sati, enforced widowhood, early marriage, observation of un-

\* Reproduced from the author's *Civil Life of India*, page 105.

touchability, and a rigid caste system. It also worked for the emancipation of women from all sorts of social inequality. Raja Ram Mohan Roy was instrumental in bringing into existence several institutions for imparting English education to his countrymen. Quite rightly and justly he has been described as the Prophet of Indian Nationalism, as the herald of a new era. In the words of Dr. Macnicol, he kindled the fire that has burnt in India since then.

What Raja Ram Mohan Roy and the Brahmo Samaj did for Bengal, Swami Dayanand Saraswati and the Arya Samaj founded by him achieved for north-west India. Swami Dayanand was the first Indian to declare 'India for Indians'; he inculcated in the people the spirit of independence and love for India and things Indian. The Arya Samaj worked wholeheartedly for the removal of untouchability, the abolition of the caste system and enforced widowhood, etc. It worked not merely for a religious revival, but also for a national revival; it brought new life to the Hindu race. On account of the marvellous awakening created by the Arya Samaj and the spirit of independence it infused in the people it became suspect in the eyes of the foreign government.

The work of the Theosophical Society in South India was of a similar nature. Col. Olcott, one of the founders of the Society, delivered many speeches in the South in which he sought to rouse the Hindus to a sense of their degeneration and urged them to separate "the splendid Hinduism of the past from the excrescences that were draining away its life." The remarks of Sir Valentine Chirol about the effect of the work of Col. Olcott and Mrs. Annie Besant deserve to be quoted. He writes as under: 'The advent of the Theosophists headed by Madame Blavatski, Col. Olcott, and Mrs. Besant gave a fresh impetus to the revival, and certainly no Hindu has done so much to organise and consolidate the movement as Mrs. Besant, who in her Central Hindu College at Banaras and her Theosophical Institution at Adyar near Madras, has openly proclaimed the superiority of the whole Hindu system to the vaunted civilization of the West. Is it surprising that the Hindus should turn their heads back upon our civilization, when a European of highly trained intellectual power and with an extraordinary gift of eloquence, comes and tells them that it is they who possess and have from all times possessed the key to supreme wisdom, that their

gods, their philosophy, their morality, are on a higher plane of thought than the West has ever reached.'

The influence of Sri Ramakrishna Paramhansa and his great and famous disciple, Swami Vivekanand who is regarded as the Patriot Saint of India, was no less than that of other religious reformers in making Indians feel proud of their ancient heritage. Swami Vivekanand urged his countrymen to arise, awake and stop not till they conquer the world with their spirituality.

It would thus be clear how the work of the various religious and social reformers and the influence of the religious awakening they brought about were among the most potent causes of the growth of Indian Nationalism. It is worth remembering that on previous occasions too, religious inspiration was the cause of political awakening in our country. It was the religious teaching of Samarth Guru Ramdas which made Shivajee possible, and it was Guru Govind Singh who laid the foundations of the Sikh rule in the Punjab. This religious foundation of our national movement has impressed upon it a character which distinguishes it from national movements in other lands ; namely, its spiritual or religious basis.

Somewhat similar was the effect of the work done by European scholars like Colebrook, Wilson, Max Muller, Monier Williams, Roth, and Sasoon, and Indian scholars like Raja Rajendra Lal Mitra and Dr. Pandu Sen and others who were full of praise for the ancient Indian culture and civilization. They revealed to the educated Indian as well as to the Western reader the glory and greatness of ancient India and imparted to the former a sense of self-confidence. Indians naturally felt overwhelmed with joy when they heard the praise of the achievements of ancient Hindus from Western scholars.

(ii) *Western Education*.— (Scarcely less important than the religious awakening as a factor contributing to the emergence of Indian Nationalism was the spread of Western education. Its effects were, however, of a different nature. Whereas the various religious and social reform movements prepared the soil for national awakening by reviving the faith of the people in their own culture and civilization and making them feel proud of their heritage and thereby instilling a sense of self-confidence in them, the spread of English education brought them into touch with the works of great

European thinkers and writers like Milton, Burke, Mill, Macaulay, Herbert Spencer, Rousseau, and Voltaire. It meant an education primarily in English thought produced during the age of Liberalism with its two main tenets of nationalism and democracy. Indians who read the political classics of English writers from Milton to Mill imbibed the life-giving ideas of liberty, nationality and self-government. They took it for granted that nations should be free and that freedom meant the establishment of self-government. They learnt from British history that British Liberalism 'had backed the cause of nations rightly struggling to be free in South America, in the Balkans, in Italy, in Ireland. They found that Britain was not only the most powerful champion of popular government in the West, but had also evolved a particular form of it, which ..... seemed the best of all possible forms. They learnt, finally, that this particular British form of government, parliamentary responsible government, could be transplanted : that, in fact, since the morrow of the American Revolution, it had been gradually extended to the British self-governing colonies overseas.\* ) Farsighted Englishmen expected the growth of such ideas as the natural result of the diffusion of English education. Sir Charles Trevelyan observed as early as 1838 that among those who had received English education 'the most sanguine dimly look forward in the distant future to the establishment of a national representative assembly as the consummation of their hopes—all of them being fully sensible that these plans of improvement could only be worked out with the aid and protection of the British Government by the gradual improvement of their countrymen in knowledge and morality.' Sir Richard Temple at a later date wrote as follows : "The educated Natives are moved by the aspirations for self-government, for the political power, and even for representative institutions, the concession of which does not at present fall within the range of practical politics."

(The effect of the propagation of ideas of nationalism, democracy, self-government, rights of citizens, etc., was the creation of an expanding section of middle-class intelligentsia whose chief public interest lay in politics and in the possibility of the growth of representative form of government in the country. It was this class which provided leadership to the National Congress. As

\* Coupland : *India, A Restatement*, page 88.

English education spread, the size of this middle-class intelligentsia also grew, and its members came to be linked up with one another by a common conception of India's political destiny. They believed that India was a nation and was therefore entitled to national freedom, and that the best way to achieve it was the introduction of parliamentary institutions on the British model.

The following passage from Tagore quoted by Andrews in his *Rise and Growth of the Indian National Congress* describes in a forceful way the effects of the study of English literature made available to the Indian students: 'We had come to know England through her glorious literature which had brought a new inspiration into our young lives. The English authors, whose books and poems we studied, were full of love for humanity, justice, and freedom. This great literary tradition had come down to us from the revolution period. We felt its power in Wordsworth's sonnets about human liberty. We gloried in it even in the immature production of Shelley written in the enthusiasm of his youth when he declared against the tyranny of priesthood and preached the overthrow of all despots through the power of suffering bravely endured. All this fired our youthful imaginations. We believed with all our simple faith that even if we rebelled against foreign rule, we should have the sympathy of the West. We felt that England was on our side in wishing to gain our freedom.'

It would not be too much to say that the cult of nationalism and the call for self-government would not have come to us with such force and so quickly, if those responsible for shaping the educational policy of the Company's government in 1833 had decided to promote oriental learning instead of encouraging English education.

The growth of English education contributed to the growth of nationalism not only by making the people familiar with the ideas of liberty, democracy, self-government, etc., but also indirectly by creating discontentment among the educated class. As the number of educated Indians increased, it became more and more impossible for the Government to find employment for them in public departments. This naturally led to discontentment among the former and they began to evince increasing jealousy of any monopoly of advantage being maintained in favour of Europeans. As will be shown later, men like Surendra Nath Bannerjea who had

been dismissed from the Civil Service and men like Manmohan Ghosh and Lalmohan Ghosh who failed to get admitted to this much coveted Service played a notable part in strengthening the national movement. Shri Mazumdar writes in his book, *History of Political Thought from Rammohan Roy to Dyanand*, that 'it is not unlikely that Bankimchandra, the greatest exponent of Nationalism in India, took to the preaching of this theory after he had met with disappointment in service.'

English education contributed to the growth of nationalism in our country in two other ways also. It provided a common language which people from different parts of the country could understand and through the medium of which they could communicate with each other and transact their common affairs. In the absence of such a *lingua franca*, the evolution of an institution like the Indian National Congress would have become extremely difficult. The use of English language as a common medium for the exchange of thought for the whole country made for the unification of the country which was so necessary for the growth of the spirit of nationalism. Secondly, reference must be made to the experience of those Indians who went to Great Britain for the completion of their studies. While in England they were received cordially and on terms of social equality. There they imbibed the spirit of equality, freedom and independence. On their return to India they found a different atmosphere altogether; in place of cordiality they met with an attitude of aloofness and rigidity, and in place of social equality the attitude of snobbery and the spirit of overlordship on the part of the Britishers. Such a great difference in the relationship between Indians and Britishers in the two countries could not but generate great dissatisfaction and resentment in the minds of England-returned Indians, and their dissatisfaction was very infectious.

If, on the one side, the spread of English education instilled in the minds of the educated young men ideas of liberty and self-government and became the foster-mother of nationalism, on the other side, it weaned many a young man from his ancestral religion and culture. Some of those who received it lost their sense of balance and proportion and became denationalised; they gave up their own ways of life and began to ape European manners. The dream of Macaulay was realised to a certain extent; a class of

persons 'Indian in blood and colour but English in taste, opinion, words and intellect', was coming into existence. These evil effects were counterbalanced by the rise of the Brahmo Samaj in Bengal, Prarthana Samaj in Bombay and the Arya Samaj in the Punjab and U. P., and of Theosophy in the South. On the whole, English education proved to be a great blessing; it created political consciousness among the middle class intelligentsia and served to unite the varying forces operating among the Indian population.

(iii) The unification of India under a strong and highly centralised government and the development of quick and safe means of travel from one part of the country to another were of great value as aids to the growth of the spirit of nationalism. The Government of India was the supreme authority for the whole country and the various provincial governments were its instruments or agents and subject to its control in legislation, finance and administration. The Central Government was therefore compelled to think in terms of the whole country while determining its economic and military policies. The presence of All India Services whose members could be transferred from one province to another and the codification of laws also materially assisted in the growth of the idea of India as one country and of her people as constituting one nation. This sense of the unity of India was greatly helped and promoted by the development of speedy means of communication like the railways and postal and telegraphic services, which enabled individuals to travel with ease, speed and safety from one part to another and to communicate with one another at any time and any distance. These speedy means of communication facilitated the forging of a large number of social and economic links between the different parts of the country. This process of unification was greatly assisted by the growth of higher education. British rule thus created conditions which gave rise to political and national awakening.

(iv) The economic policy pursued by the Government of India, under both the Company and the Crown, led to the destruction of Indian industries and the impoverishment of the people. It is not necessary to describe here the systematic way in which the Company managed to kill Indian industries, or the highly adverse effects on the nascent Indian large-scale industries produced by the

adoption of the policy of free trade in the interest of Lancashire. The deteriorating economic condition of the people and the policy of excluding Indians from high posts in the administration created a good deal of anti-British feeling in the minds of the educated classes and thus they were great spurs to the growth of nationalism. This economic factor continued to operate for long after the birth of the Indian National Congress in 1885.

(v) The failure of the Government to give effect to the policy of appointing Indians to high posts also gave a great stimulus to the national movement ; a few words about it seem to be necessary here.

It would be recalled that the Act of 1833 contained a clause which laid down that henceforth fitness was to be the criterion of eligibility and that no Indian 'shall by reason only of his religion, place of birth, descent, colour or any of them, be disabled from holding any place, or employment under the Company.' This raised high hopes in the minds of educated Indians whose number was rapidly increasing and who naturally expected to get suitable and adequate employment ; but they were not fulfilled. No Indian was appointed to a single responsible post during the succeeding twenty years. The result was that when the time for the renewal of the Charter came in 1853, the inhabitants of the three Presidencies sent largely signed petitions to the British Parliament opposing the extension of the Charter of the Company for any further term. This was perhaps the first manifestation of the awakening of public and political life in the country. It demonstrates that the resentment and bitterness caused by the non-fulfilment of promises and the exclusion of the sons of the soil from share in the administration of the country are a highly potent factor in the growth of the spirit of nationalism. The mistake was repeated time and again. The Proclamation issued in 1858 soon after the assumption of the responsibility for the Government of India by Queen Victoria produced a great outburst of the feelings of loyalty on the part of the people of India, but those feelings were replaced by anger and resentment when it was found out that it remained a pious wish and did not produce any change in the policy of the Government. Some of the most highly gifted young men of Bengal tried to enter the hitherto closed arena of the Civil Service which was thrown open to competition as a result of agitation carried on since the days of Raja Ram

Mohan Roy, but could not succeed. The storm of indignation raised by the disqualification of Surendranath Bannerjee and Aurobindo Ghosh for the Civil Service on technical grounds to which reference will be made in a following section also illustrates the same point.

(vi) Mention should also be made of another very valuable and powerful factor which rendered great help in creating and fostering national consciousness in our country ; namely, the Indian owned and managed press, both English and Vernacular. It had grown rapidly with the spread of education. 'In 1877 there were in Indian languages alone 62 papers in the Bombay Presidency and about the same number in northern India, some 28 in Bengal and about a score in southern India, and their total circulation reached the neighbourhood of 100,000. Newspapers in English found an even larger public.'\* These Indian owned and edited papers generally supported the nationalist cause and were critical of the doings and policies of the Government ; whereas the British owned and edited papers were anti-national and pro-government. In the beginning the Indian Government adopted the principle of freedom of press in conformity with British traditions. But it felt much annoyed with the irresponsible and sometimes bitterly hostile attitude of the vernacular press ; and in 1878 it passed the Vernacular Press Act which sought to subject the press to control and restrictions. This measure provoked great resentment and opposition both in India and in England and was revoked four years later. Restrictions were however re-imposed upon the Indian press at a later stage ; but inspite of the restrictions it continued to advocate the cause of Indian nationalism and agitate for political reforms. Its role in fostering patriotism and developing nationalism has been great and active.

(vii) It would not be wrong to refer to another factor which indirectly contributed to the growth of nationalism in our country ; namely, the feeling of racial bitterness and hostility against the Britisher. This was a legacy left by the Mutiny, and was kept alive by the high-handed and contemptuous way in which the Britishers sometimes dealt with the people. Indians, even though they might have held high position in society, were not admitted to European

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\*Philips : *India*, page 94.

clubs, and were treated arrogantly by the White Sahibs. Assaults on Indians by Europeans were not infrequent ; and what is worse, they either went unpunished or a very small penalty was imposed on the European culprit because of the pressure of the European community. The administration of criminal justice thus became a scandal where Europeans were involved. The following extract from Sir Henry Cotton's famous book, *New India*, is highly revealing on this point. He writes : 'If a tea planter is charged with an outrageous assault upon a helpless coolie, he is tried by a jury of planters whose natural bias is in his favour ; but, if in any circumstances, such as interference by the High Court or otherwise, a conviction should ensue, the whole volume of English opinion finds expression in denouncing the verdict, the Anglo-Indian newspapers add fuel to the flame and give free vent to this protest in their columns, public subscriptions are raised to pay the expenses of the culprit, and influentially signed memorials are addressed to the Government praying for his release.' The natural result of such an attitude would be the intensification of the feelings of racial bitterness which in turn makes for the growth of nationalism.

(viii) It remains to describe several notable events which occurred during the seventies of the last century and led directly to the establishment of the Indian National Congress in 1885. In their totality they may be said to constitute the political factor.

After a year's hard work in England Surendranath Bannerjea passed the open competitive examination for the Indian Civil Service in 1869 but was disqualified on account of a technical discrepancy, along with another successful candidate. This act roused bitter and intense indignation in India, more particularly in Bengal ; and many notable and leading personalities and the press condemned it. The matter was referred to the Queen's Bench Division for adjudication, and it was decided in favour of the disqualified candidates who were reinstated in the Civil Service. Mr. Surendranath Bannerjea came to India and was posted as an Assistant Magistrate in November 1871. But after about two years' service he was dismissed on certain flimsy charges. He writes about this incident in his autobiography as under : 'My case excited very strong feeling in the Indian community, and the general belief among my countrymen was that, if I were not an Indian, I would not have been put to all this trouble, and

that the head and front of my offence was that I had entered the sacred preserves of the Indian Civil Service, which so far had been jealously guarded against invasion by the children of the soil. Many years afterwards a Lieutenant Governor told me that it was a wicked proceeding.\* It should be remembered that in spite of Queen Victoria's Royal Proclamation Mr. Surendra Nath Bannerjea was the second Indian to be appointed to the Civil Service. Later on Mr. Aurobindo Ghosh was also disqualified for the Civil Service on technical grounds. Such treatment meted out to the sons of the soil could not but produce resentment and bitterness. The observations of Mr. Bannerjea on his dismissal made in his autobiography '*A Nation in Making*' are worth quoting in full. He writes: 'I felt that I had suffered because I was an Indian, a member of a community that lay disorganized, had no public opinion, and no voice in the councils of their government. I felt with all the passionate warmth of youth that we were helots, hewers of wood and drawers of water in the land of our birth. The personal wrong done to me was an illustration of the helpless impotency of our people. Were others to suffer in the future as I had suffered in the past? They must, I thought to myself; unless we were capable as a community of redressing our wrongs and protecting our rights, personal and collective. In the midst of impending ruin and dark, frowning misfortune, I formed the determination of addressing myself to the task of helping our helpless people in this direction.'† The first thing he did on his return from England where he had gone a second time to qualify for the Bar was to start the Indian Association which was designed to be a political association to represent the educated middle class. This Association came into existence in 1876, and soon became the centre of leading representatives of the educated community and focussed their public spirit. The decision of the Secretary of State for India to reduce the maximum age limit for the open competitive examination for the Indian Civil Service held in England from twenty-one to nineteen years made it almost impossible for Indian students to compete for this examination. This most reactionary act was regarded as a deliberate attempt to blast the prospects

\* *A Nation in Making*, page 29.

† Pages 32-33. It should be remembered that Mr. Surendranath Bannerjea was shut out from the Bar by the Benchers of the Middle Temple on the ground that he had been dismissed from the Civil Service.

of Indian candidates for the Indian Civil Service; it gave the new Association an opportunity to realise some of its ideals. It resolved upon organizing a national movement. A great public meeting was held at Calcutta on March 24, 1877. Surendranath Bannerjea was deputed to visit different provinces and hold meetings in important towns. He visited Lahore, Amritsar, Meerut, Allahabad, Kanpur, Lucknow, Aligarh and Banaras, addressed crowded meetings, and, wherever possible, established political organizations to act in concert with the Indian Association. A network of organizations was thus established, and foundations for united and concerted action laid. Wisely has it been remarked that reactionary rulers oftentimes create great public movements. This agitation against the lowering of the age limit marked the beginning of national awakening, unity of action and solidarity of purpose. It showed, in the words of Surendranath Bannerjea himself, that 'whatever might be our differences in respect of race and language, or social and religious institutions, the people of India could combine and unite for the attainment of their common political ends.'\*

The lowering of the age limit for the Civil Service examination was not the only act which gave the Indian Association an opportunity for conducting a nation-wide agitation. The regime of Lord Lytton as Governor General was full of such acts. He held an Imperial Durbar at Delhi to announce Queen Victoria as the Empress of India. The Durbar was held in 1877 at a time when parts of the country were in the grip of a severe famine. This provoked from a Calcutta journalist the comment that Nero was fiddling when Rome was burning. The Durbar however came as a blessing in disguise. It struck men like Surendranath Bannerjea who had gone there as a press representative that if the princes and the nobles in the land could be forced to form a pageant for the glorification of an autocratic Viceroy, why could not the people be gathered together to unite themselves to restrain, by constitutional means and methods, the spirit of autocratic rule.† The idea was discussed in the Association and in the press, took root in the minds of leading persons, and finally led to the establishment of the Indian National Congress. Thus sometimes good cometh out of evil.

\* *Ibid.*, page 51.

† A. C. Mazumdar: *Indian National Revolution*, pages 32-33.

Lord Lytton was responsible for putting on the statute book two most obnoxious measures, the Vernacular Press Act of 1878, and the Indian Arms Act of the same year. In 1835 the government of Sir Charles Metcalfe had abolished the strict censorship imposed upon the press since 1799, and restored its freedom. Since then the vernacular press began to progress rapidly, and by 1877 there were 644 newspapers in British India, and a great majority of them were conducted in vernacular. The educated people had developed a taste for paper reading, and even the illiterate would love to listen to 'a single reader of these papers at a stationery stall or a grocer's shop'. Some of these papers might have been unbalanced in their criticism of the government, but they never lost touch with the new spirit of the age. The government of Lord Lytton got alarmed at the rapid growth of the power of the press and on the 13th of March, 1878, sent a telegram to the Secretary of State seeking permission to enact a special measure to stop the activities of the press which were becoming seditious. The permission was obtained the next day, and within two hours the Vernacular Press Act was passed. The Act, popularly known as the Gagging Act, roused a storm of protest all over the country, most particularly in Bengal where it was enforced with great stringency. A monster meeting was held in Calcutta to protest against it. Regarding this meeting Mr. Surendranath Bannerjee writes as follows : 'It was one of the most successful meetings ever held in Calcutta. It sounded the death-knell of the Vernacular Press Act, and what is more important, it disclosed the growing power of the middle class, who could act with effect for the protection of their interests, even though the wealthier classes were lukewarm, and official pressure was openly arrayed against them.... It indeed marked a definite and progressive stage in national evolution, and was the creation of the builders of the Indian Association.\* The agitation was continued and the Act repealed four years later by Lord Ripon.

The Arms Act was another terrible engine for repression. It stood on the statute book during the British period in spite of the repeated efforts of the National Congress to get it repealed. It made it a penal offence to keep or bear arms and to traffic in arms without a license. Heavy penalties were imposed for infringing the

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\* *A Nation in Making*, page 62.

provisions of the Act. Licenses were very sparingly granted. One of the worst features of the Act was the racial discrimination it introduced. The rules made under it exempted from its operation Europeans, Anglo-Indians and certain government officials. It emasculated the whole nation and made it impossible for the people to offer resistance to any foreign invader. At a very late date, however, there was some relaxation in some of its provisions. In a modified form it is still on the statute book of free India.

Amongst other foolish things done by the government of Lord Lytton which drove the country into despair were the wanton invasion of Kabul followed by the second Afghan War, the costly experiment of establishing a 'scientific frontier', and the abolition of the cotton import duty to placate Lancashire. As a result of these and other actions, 'the state of things at the end of Lord Lytton's regime was bordering on revolution.'

(ix) Finally, reference should also be made to the effect produced on the mind of young India by political movements in several European countries. Germany, Italy, Roumania, Serbia and Montenegro attained unification between 1861 and 1884. During this period England saw the passing of the Second and Third Reform Acts which made the British Constitution much more democratic than what it had been in the past, and France witnessed the establishment of the Third Republic. In Italy and Spain also constitutional monarchy was set up during this period. As a result of the American Civil War slaves were liberated in the U. S. A. Even Russia had some liberal policy during the reign of Alexander II. All these events were watched with deep interest by the educated classes in our country who began to hope that they also could secure for their country some of the benefits which other countries had obtained.

(x) *Ilbert Bill Agitation*— The diverse events described above, effective as they were in having stimulated political awakening among the educated middle class on a somewhat national scale, antedated the founding of the Congress by several years. None of them was an immediate occasion for the great event of 1885, which the opposition against the Ilbert Bill organised by the Europeans in India proved to be. This topic deserves a few words.

According to the then existing law Europeans outside the

Presidency towns could be tried only by European judges or magistrates. Indian magistrates, whatever their rank might have been, were not empowered to try them even though their European subordinates, if any, had that power. This was an anomaly and an invidious distinction between Indian and European members of the Indian Civil Service. On a representation being made by an Indian I. C. S., the matter was taken up by the Government of Lord Ripon whose Law Member, Sir Courtney Ilbert, introduced a measure in the Legislative Council in 1883, designed to remove the highly objectionable disqualification attaching to the Indian judges and magistrates in the trial of European offenders and thus do away with the racial discrimination involved. But the Bill met with such stern and bitter opposition from the European community, both official and non-official, that it had to be withdrawn.\* The manner in which the Europeans organised the agitation by setting up a defence association with its head-quarters at Calcutta and branches in different parts of the country and collecting one lakh and a half of rupees for meeting the expenses was an object lesson to Indians whose support to the Bill was weak and almost unorganised.

The Ilbert Bill agitation was an eye-opener to Indians in several ways. In the first place, it clearly showed that justice was not to be expected where vested interests and privileges of the governing race were involved. In the second place, it demonstrated the value of organised agitation. People realised that in political matters what mattered was not the justice of the cause but united and concerted action. They further felt that if political advancement were to be achieved, it could only be by the *organisation of a national assembly wholly devoted to wider politics than hitherto pursued in the different provinces independently of each other.*† The idea caught the imagination of thinking persons in Bombay, Bengal and Madras Presidencies where new associations came into being to create public opinion upon political, social and economic matters. These associa-

\* We are not here concerned with the further progress of the Bill in a modified form. It is sufficient to state that a compromise was arrived at between the Government and the Europeans according to which the Indian District Magistrates and Sessions Judges were empowered to try European accused on condition that the latter were given the right to claim trial by jury at least half of whom must be European members.

† A. C. Mazumdar : *Indian National Evolution*, page 39 ; italics mine.

tions were the fore-runners of the Indian National Congress.

The Indian Association of Bengal called a 'National Conference' in Calcutta in 1883. It was attended by leading men from all over the province. It was in this conference that Surendranath Banerjee exhorted the people to organise and unite for the cause of the country. It adopted a programme of action substantially similar to the one adopted by the Congress two years later. Its three days' session and the enthusiasm and eagerness which characterised its activities were later on to become features of the Congress. A Provincial Conference was also held in Madras in 1884. In Bombay also the Bombay Presidency Association was ushered into existence in January 1885, in which persons like Mr. Badruddin Tyebjee, Pherozeshah Mehta, K. T. Telang, and Dinshaw Eduljee Wacha took part. In this connection it is also necessary to mention that in December, 1884, after the Annual Convention of the Theosophical Society at Adyar was over, seventeen prominent men representing all parts of India met at the house of Dewan Bahadur Raghunath Rao in Madras 'to find ways and means of bringing together Indian politicians to inaugurate a political movement for the regeneration and reform of methods of government of this country, calculated to promote a future advance towards Swaraj.' They resolved 'to form themselves into a group of provisional committee, men from different towns to win others, each in his own place, and to meet later for further consultation.\*

**The Birth of the Congress.**— While these associations were being formed in different provinces and the press was urging the people to unite on a common platform and under a common standard, Mr. Allan Octavian Hume, a retired member of the Indian Civil Service, addressed an open letter to the graduates of the Calcutta University 'urging them to organize an association for the mental, moral, social and political regeneration of the people of India.' According to Shri Ambika Charan Mazumdar this appeal did not go in vain. These two streams met, and the Indian National Union was formed towards the close of 1884. In March 1885 the Union decided to hold a meeting of representative Indians from the different parts of the country at Poona during Christmas week. This conference was called with the two-fold object of enab-

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\* Annie Besant : *How India Wrought for Freedom*, page 1.

ing all the earnest workers in the cause of the country to become acquainted with one another, and of discussing and deciding upon the political operations to be undertaken during the ensuing year. Mr. Hume was put in charge of organising it and settling the details. From several points of view Mr. Hume was the best person for this responsible duty. He made full use of his position as an ex-civilian in enlisting official sympathy and support. He paid a visit to England and succeeded in securing the goodwill and interest of several men of eminence there. The official sympathy thus obtained was highly useful in helping the Congress to get a good start. Owing to an outbreak of cholera at Poona a few days before the Conference was to meet, its venue had to be shifted to Bombay, much to the disappointment of the Poona citizens. The delegates to the Conference arrived at Bombay on the morning of December 27, 1885, and the regular session started the next day. The Conference came to be known as the Indian National Congress.

This is how the great national institution was ushered into existence as a result of 'the joint efforts of Indian and British democrats, who were primarily moved, not by narrow nationalist motives, but by a genuine devotion to Truth and Justice, in the vindication of which they both sought the true glory of their respective countries and the happy crowning of a century's work in mutually advantageous collaboration.'\* Through its chequered career the Indian National Congress has continued to express the national sentiments, put forth the national demands and forge a sanction behind them. It has served the country with a single-minded devotion and courage of which every one connected with it may reasonably be proud, and which has endeared it to every Indian heart.

**The Objective of the Congress.**— The National Congress was founded in 1885 with a modest aim. It was nothing more ambitious than the organisation of public opinion in the country on questions of national importance with a view to the removal of grievances in a constitutional manner and securing some share for the people in the government of the country. An examination of the resolutions passed at its annual sessions during the first few years of its life would show that it demanded piece-meal reforms in the administration of the country in an almost prayerful language. Council reform was one

\* Zacharias : *Renaescent India*, page 114.

of its main points. In 1890 a deputation was sent to England to represent its views and to press upon the attention of the British public the political reforms which the Congress advocated. The Congress demand was that the Councils should contain fifty per cent elected members and that the representatives of the people should be given larger powers.

Council reform and increase in the powers of the Councils remained the goal of the Congress policy till the rise of what was called the Extremist party under the leadership of Bal Gangadhar Tilak, Lajpat Rai and Bipin Chandra Pal. We shall trace the causes of the growth of extremism in Indian politics in the next section. Here we would simply refer to the effect it had on the goal of the Congress. The wide popularity of Lokmanya Tilak's forceful declaration 'Swaraj is my birth right and I shall have it', led the veteran leader Dadabhai Naoroji, who presided over the 1906 session of the Congress, to declare in his presidential address that the attainment of self-government or Swaraj for India was the goal of Congress activities. Though the extremist section was in favour of adopting a more vigorous method of action than mere making representations to the British statesmen, there was no change in the method of the National Congress till the advent of Gandhiji. Under his leadership Congress demanded self-government within the empire if possible, without if necessary, and forged the method of non-violent non-cooperation to achieve its end. In 1929 the end of the Congress was changed to Complete Independence. It would be clear from this very short account that the objective of the Congress changed as it grew from strength to strength ; its methods also changed with circumstances. From the point of view of the changes in its objective or goal the history of the Congress can be divided into four distinct phases. The first phase covers the period from 1885 to 1905 ; the second from 1906 to 1919 ; the third from 1920 to 1929 ; and the fourth from 1930 to 1947. During the first two periods it retained the constitutional method of making representations. During the last two it abandoned this method in favour of the method of non-violent direct action invented by Gandhiji. In this chapter we shall refer to the first two phases only.

**The Birth of Extremism.**— The most notable feature of Congress activities and policies during the first two phases was its

belief in the efficacy of the constitutional method for securing reforms and redress of grievances. Its leaders were the product of western education and were imbued with the spirit of British Liberalism. They had an abiding faith in British sense of justice and fairplay, and in the efficacy of moral persuasion as the best means of gaining their objectives. They believed that if only they could convince the British public and Parliament of the justice and reasonableness of their demand for further reforms, they would be conceded. So what was necessary was a clear and cogent statement of facts together with sound and irrefutable arguments in support of their demands. They might fail once or twice; but if they persisted in their efforts, they were bound to succeed in the long run. This is the essence of the constitutional method; it postulates patience and belief in progress by means of lawful agitation. Perhaps, this was the only method available to the Congress during the early years; it had not developed into a mass movement and lacked sanctions behind its demands.

But forces were at work and events were happening in India and outside which led young men with a different outlook and mentality to question the soundness and validity of this method of constitutional agitation, the method of representation and prayer and moral persuasion. At the beginning of the present century a new party arose which decried the methods and ideology of the older leaders and recommended the adoption of more self-reliant and independent methods. Bal Gangadhar Tilak, Lajpat Rai and Bipin Chandra Pal were the three great leaders of this party. It was called the extremist party in contrast to the older one which came to be known as the moderate group. It exercised great influence on subsequent developments in Congress ideology and methods of work. A study of the events which led to its formation is therefore essential.

(i) The reforms introduced by the Indian Councils Act of 1892 had proved to be very inadequate, and the people were greatly dissatisfied with the achievements of the Councils. Although veterans like Surendra Nath Bannerjee in Bengal, and Ferozeshah Mehta in Bombay worked with great vigilance and subjected all the affairs which came within the purview of the Legislative Councils to great criticism, the actual achievements were insignificant.

From 1892 onwards, Congress used to pass resolutions pleading for the reform and expansion of the Legislative Councils, the separation of the judiciary from the executive, simultaneous examinations for the Civil Service in India and England, the reduction of military expenditure, a larger share of Indians in appointments to the higher government services, the admission of Indians to the Executive Council of the Governor General and to the India Council, the lowering of the burden of taxation on the people of India, etc.; but they had little or no effect on the authorities in England and India. Government paid no heed to what the Congress asked for. On the other side, Indian representatives in the Legislative Councils could not prevent Government from doing what it had set its mind on. In defiance of all canons of justice and principles of Economics and of Indian public opinion the Government of India imposed an excise duty on cotton goods produced in India to counterbalance the duty imposed on cotton piecegoods imported from Lancashire. Nor could the Government be stopped from adopting a policy of stern repression. The absence of response from the Government made the younger section of the Congress impatient; they began to question the utility of the method of representation, or the method of mendicancy as they preferred to call it. They felt that 'such rate of progress seemed to contemplate a gradual evolution of centuries, not years', and began to wonder 'whether a more revolutionary method would not yield quicker and greater results'.\* Events occurring outside India to which reference will be made later on added force to this spirit of revolt. They lost faith in British justice and integrity; and some of them developed revolutionary tendencies.

(ii) A great famine, the most intense and severe famine ever known till then under British rule, occurred in 1896-97 affecting about 70,000 square miles in different regions, and a total population of about twenty millions. The relief machinery set up by the Government was inadequate, slow moving and badly organised. There was great hardship and suffering in the country. To add to the misery of the people there broke out in a virulent form an epidemic of bubonic plague which caused great havoc in the western parts of the Bombay Presidency. The measures adopted by the

\* Zacharias : op. cit., page 128.

Government of Bombay to combat this epidemic caused great resentment and bitterness among the people. One of the gravest defects of the famine-relief and plague-prevention measures taken by the Government was that the entire work was left in the hands of government officials most of whom belonged to a different race and could not work so selflessly and zealously as non-official Indian agencies could do. The nation stood watching helplessly, while millions were starving and dying. It brought their own helplessness home to them.

(iii) So great was the resentment of the people against the unpopular Plague Commissioner of Poona, Mr. Rand, for the provocative measures he had taken, and so strong was the criticism in the press, specially in the *Kesari* edited by Lokamanya Tilak, that riots broke out and one sensitive young man shot dead Mr. Rand and his associate Lt. Ayerst. This was followed by great repression all over Maharashtra. Tilak was tried for having instigated the murder of Rand and Ayerst by his speeches and writings, and sentenced to eighteen months' imprisonment. He was not given leave to appeal to the Privy Council. This heavy sentence and the refusal of leave to appeal raised a storm of indignation throughout the length and breadth of the country. The comment made by the *Hindu* of Madras on this episode is highly significant and worth quoting. It wrote: 'Nothing has happened during these forty years to remind the people more of their abject helplessness and to give more poignancy to the consciousness of their political subjection than the recent doings of the Bombay Government.'\*

(iv) More important than these causes was the highly reactionary policy of the government of Lord Curzon whose seven years' regime was full of 'missions, omissions and commissions'. This high priest of British imperialism trod underfoot the ambitions and aspirations of Renascent India. His frontier policy and the mission to Lhasa were bitterly criticised. The Official Secrets Act of 1904, the Calcutta Corporation Act, and the Indian Universities Act which were designed to officialise these bodies under the plea of reforming them went clearly against the spirit of the times and evoked universal criticism. The Durbar held at Delhi in 1902 immediately after the severe famine of 1899—1901, and in the face of opposition from Indians

\* Quoted by Andrews : *The Rise and Growth of the Congress*, page 193.

was resented as 'a pompous pageant to a starving population'. What was worse was the fact that he expressed in unequivocal terms his conviction about the unfitness of Indians for holding high offices in the government, and gratuitously charged the educated classes among them with untruthfulness. Here is what he said in his Calcutta University Convocation speech: 'Undoubtedly truth took a high place in the codes of the West before it had been similarly honoured in the East, where craftiness and diplomatic wile have always been held in high repute.' This false and unjust charge against Indian character evoked strong condemnation, and retorts were published in the Indian press.

(v) That was not all; the worst and the most foolish act of his viceroyalty was still to come in the shape of the Partition of Bengal. Not only did he force this obnoxious measure on the country in the teeth of strong and unanimous opposition of the people of Bengal, the time chosen for it was most ominous—1904, the year of the battle of Tsushima, when a little Asiatic power, Japan, had vanquished the giant Russia, of which England herself had for a generation shown such undoubted nervousness. Japan's smashing victory could not fail to thrill India from Cape Comorin to the Himalayas, nor to be taken by her as a turning point in the political relationship between the East and the West.\*

Two things combined to inflame public opinion in Bengal, and in India as a whole, against the Partition. It was generally believed by the educated section that the partition of the province was designed with the sinister motive of destroying the growing solidarity of Bengal nationalism, and driving a wedge between the Hindus and the Muslims of the province and creating disunity between them. 'The whole purpose and effect of the measure was manifestly Machiavellian.'† Lord Curzon toured East Bengal and addressed huge gatherings of Muslims and explained to them that his object in partitioning the province was not merely to relieve Bengal administration, but also to create a Mohammedan province where Islam could be predominant and its followers in ascendancy. The opposition of the people of Bengal to this move was made known to him personally during the tour. Public meetings were

\* Zacharius : op. cit., page 139.

† Ibid, page 141.

held all over Bengal in which this sinister move of the Government was condemned. Memorials to the same effect were sent to him. A petition signed by 60,000 people was submitted to the Secretary of State imploring him to withhold sanction to this mischievous proposal. But nothing availed. The Viceroy had made up his mind, and the officials under him had given their approval to it. Lord Curzon was not the person to be deterred by the opposition on the part of the people. Nay, he went one step further and added insult to injury by characterising the opposition to his project as 'manufactured', as engineered by a few agitators. The supreme contempt he thus showed for public opinion exasperated the people, and they resolved not to take this insult and humiliation lying down. They accepted the challenge thrown to them by Lord Curzon and determined not to rest until this most mischievous measure was annulled.

The contemptuous disregard Lord Curzon had shown for public opinion made the people realise that mere holding of meetings and passing of resolutions of protest and condemnation would not suffice ; something more tangible and more vigorous which the imperialist could understand and appreciate was needed. Somebody hit upon the idea of boycotting British goods as a forceful retaliatory measure. It was in harmony with the spirit of *Swadeshi* which was already making much headway, and was therefore adopted. The citizens were asked to take a pledge to abstain from purchasing British manufactured commodities so long as the partition was not annulled. It was also meant to be a protest against 'the indifference of the British public in regard to Indian affairs and the consequent disregard of Indian public opinion by the present Government.'\* The boycott movement was a tremendous success ; old and young, men and women, all were engulfed by it. Students refused to answer the question paper in an examination until *swadeshi* paper was supplied to them on which to write their answers ; even young girls returned the presents sent to them by their relations in case they happened to be foreign. The success of the movement exasperated the bureaucracy which then resorted to repressive measures to break it. But these measures only served to fan the public excitement all

\* Part of the resolution that was to be passed at meetings to be held on August 7, 1905.

the more, and unrest grew apace. One result of the policy of repression launched by the Government was the appearance of what has been called the terrorist movement. It came rapidly to a head; the ruthlessness of the police was answered by the violence of the secret conspirators. In this way a new phenomenon appeared on the political horizon of India.

(vi) At its 1904 session the Congress passed resolutions protesting against the effort to officialise education and the Calcutta Corporation. It also resolved to send a deputation headed by that year's President, Sir Henry Cotton, to wait upon the Viceroy with the resolutions. Lord Curzon, however, refused to receive the deputation. The Congress felt insulted and sent Mr. Gokhale and Lala Lajpat Rai to England. On returning from there Lala Lajpat Rai told his countrymen that 'the British democracy was too busy with its own affairs to do anything for them, that the British press was not willing to champion Indian aspirations, that it was hard to get a hearing in England, and that the influence and the credit of Anglo-Indians was too strong to be met successfully by the necessarily inadequate agitation which the Congress could set up in England.'\* In brief Lala Lajpat Rai asked his countrymen to stand on their own feet and to depend upon their own efforts to achieve political reforms.

(vii) Events occurring outside India also exercised a profound influence on the mind and outlook of the rising generation and materially helped the rise of extremism. The discriminating and humiliating treatment that was being meted out to Indians in British colonies, specially in South Africa, created much resentment and bad blood in India; it intensified the anti-British feeling which was rapidly developing in the younger section of the public. The defeat of the Italian army by the Abyssinian forces in 1896 heartened and gladdened the Indians. The nationalist movements in Egypt, Persia, and elsewhere also stimulated the Indians. But the event which created the greatest impression on and thrilled the whole of Asia and became a most potent stimulus to Indian nationalism was the crushing defeat inflicted by Japan upon Russia in 1904. The following extract from Sir Henry Cotton's *New India* vividly describes the effect of the Japanese victory. He writes: 'Above all, there is Japan.

\* *Young India*: quoted by G. N. Singh, op. cit., pages 294-5.

What an inspiration has been afforded by the character of these Eastern islanders? What an example have they not set to the East of the power of patriotic spirit? The example is not lost on India.' (page 14). Young India began to ask: May we not also be able to challenge Great Britain some time in the future?

**The Extremist Party.**— The events described above gave a new turn to Indian politics; they were responsible for the emergence of what may be described as aggressive militant nationalism in our country. It found expression in two different forms: (i) the formation of the extremist bloc within the Congress; and (ii) the growth of terrorism or revolutionary movement in the country at large. In this section we shall deal with the extremist party; and in the next, with the emergence of terrorism.

As has been pointed out above the extremist bloc was organised under the able leadership of Bal Gangadhar Tilak, Lajpat Rai, and Bipin Chandra Pal. It is very necessary to understand the points of difference between the old and the new school. The basis of the difference was temperamental and not ideological; it related more to the methods by which the goal of the Congress was to be achieved and less to the goal itself which was declared to be Swaraj by Dadabhai Naoroji at Calcutta. Speaking at a meeting in 1909, Gopal Krishna Gokhale, one of the best, noblest and wisest sons of India and a pillar of strength to the old party, explained the main difference between the political doctrine of the moderates and that of the new group in the following words: 'Our old public life was based on frank and loyal acceptance of British rule due to a recognition of the fact that it alone could secure to the country the peace and order which were necessary for slowly evolving a nation out of the heterogeneous elements of which India was composed and for ensuring to it a steady advance in different directions. The new teaching condemns all faith in the British Government as childish and all hope of real progress under it as rash.' Because of its faith in British sense of justice and fairplay, the old leadership stuck to the method of lawful and constitutional agitation. It counselled patience, and believed in gradualness of reforms. It was not tired of eulogising the benefits conferred upon India by British rule, and was in favour of making the bonds between India and England durable and deeper. 'We of the moderate party believe that the connec-

tion of England with India is a divine dispensation ordained for the loftiest and highest of ends.\* The new leadership had lost faith in British sense of justice and fairplay: it asserted that there was no room for philanthropy in politics. Therefore it rejected as useless and unavailing the method of petitioning and representation: instead of relying on British generosity, it recommended a more self-reliant and independent method. It laid stress on boycott of British goods, encouragement of Swadeshi, and establishment of national institutions. Lala Lajpat Rai gave expression to the temper and spirit of the new leadership in the following words: 'Indians should no longer be content to be beggars, whining for favours; for if they really cared for their country, they would have to strike a blow for themselves.' Lokamanya Tilak's slogan 'Swaraj is my birth-right and I shall have it' also breathes the spirit of self-reliant action. Whereas the old leadership would not recommend any course of action which would bring them into clash with the Government, the new one advocated passive resistance involving much suffering and the risk of being sent to jail. It appealed to persons who felt deeply the humiliation of foreign rule and reacted violently to the racial arrogance which was exhibited by some members of the ruling race in India. It is interesting to note that while leaders like Dadabhai, Gokhale, Ferozesah Mehta, and Anand Mohan Bose were never made to suffer for their patriotism by the British Government, extremist leaders like Tilak and Lajpat Rai were clapped behind prison bars several times. Thus the differences between the old and the new were deep-seated and fundamental; the extremists looked with undisguised contempt upon the moderation of the Old Guard. The matter came to a head at Surat where the split occurred. As a result of the new constitution adopted by the Congress in 1908 the Extremists were practically excluded from its membership, and the Moderates enjoyed undisputed sway till 1916 when the Extremists rejoined it. The Government of India also came to the help of the Moderates by arresting most of the extremist leaders and either deporting them without trial or sentencing them to various terms of imprisonment.

**The Terroristic Movement.**— In as much as the terrorist or revolutionary movement exercised little or no influence on the constitution.

\* Surendra Nath Bannerjea : *A Nation in the Making*, page 336.

tutional development, and its effect on the growth of nationalism was neither deep nor lasting, our reference to it will be brief. In view of what has been said above about the factors which gave rise to the extremist movement in the country, it is not necessary to add anything more about the cause of the emergence of the revolutionary movement. Both of them were the product of the same set of circumstances. Feeling disappointed at the meagerness of the British response to the national demand and stimulated by the series of events which happened in and outside India, some young men, more sensitive and more courageous and more impassioned than others, took to the cult of the bomb. They argued that an ounce of lead can work more wonders than a ton of argument and moral persuasion. Looking to the period during which the movement was active and vigorous, namely, from 1905 to 1911, and to the fact that Bengal was the chief centre of its activities, it would not be wrong to ascribe its appearance to a large extent to the Partition of Bengal and the policy of ruthless suppression adopted by the Governments of Bengal and the newly carved province of East Bengal in dealing with the anti-partition agitation. Barindra Kumar Gosh, the brother of Aurobindo Ghosh, and Bhupendara Nath Dutta, the brother of Swami Vivekanand, were among the high priests of this new cult. They openly preached the cult of revolution through the *Yugantara*. They organised revolutionary societies modelled upon the Russian and Italian secret societies for planning and executing acts of terrorism. Their activities commenced in 1907 with an attempt to blow up the train in which the Lieutenant Governor of Bengal was travelling. Shortly after, in December the District Magistrate of Dacca was shot in the back but without fatal results. In 1908 an attempt was made on the life of Mr. Kingsford, who as the Chief Presidency Magistrate of Calcutta, had sent many persons accused of political offences to jail; it, however, resulted in the death of two innocent ladies as a result of mistaken identity. The police became active in its hunt after the revolutionaries, and several conspiracies were unearthed in Bengal leading to the arrest, conviction for long terms and the execution of a large number of revolutionaries. There was some activity of this nature in Maharashtra also where Shyamji Krishna Verma, the Chapekar brothers and the Savarkar brothers were the main organisers. Revolutionary societies were at work in England

also where Vinayak Savarkar and Shyamji Krishna Verma were responsible for vigorous propaganda. One Madan Lal Dhingra assassinated Col. Sir William Wyllie at the India Office by way of vengeance for the heavy sentences of transportation and death passed by British courts on patriotic Indian youths.

The revolutionary movement was very active in Bengal and the Punjab during 1913—16 also. About sixteen outrages were committed in Bengal during 1913, and 19 in 1914. The number increased still further in 1916. An unfortunate feature of these outrages was that dacoities, sometimes accompanied with murder, were committed and holds-up carried out for the purpose of financing the movement. Some of the Punjab revolutionaries were responsible for an attempt on the life of Lord Hardinge, the Governor General. The Delhi Conspiracy Case was started which culminated in death sentence being passed on Amir Chand, Avadh Behari, Balmukund and Basant Kumar Biswas. The revolutionary movement in the Punjab was reinforced by the return of Sikh emigrants from Canada. A regular Ghadar party was organised under the leadership of Har Dyal. It is not necessary to add details.

The revolutionary movement failed because it appealed to a very small circle of young men and lacked a central organisation which could direct and control it on an all-India basis. What is more important, the upper middle class leadership was unsympathetic to it; leaders like Surendra Nath Bannerjee and Sir Ashutosh Mukerjee asked Government to take stern measures to kill it. It died when Mahatma Gandhi appeared on the scene and gave to the country the sublime message of Truth and Non-Violence.

**Muslim Communalism.**— Far more vital in its effects on the political life of the country than the rise of the revolutionary school and even the growth of extremism was the introduction of the principle of separate communal representation during the period under review. Its effects persist and colour social and political life till today. The topic of Communalism in Indian Politics will be discussed in a separate chapter in great detail; here only a brief reference to it would be made.

It may be mentioned that the Indian National Congress was ushered into existence with the sympathy and support of the Government of British India; it was designed to be a counter-

poise to threatened Russian intrigues in the country. But the growing power of the Congress and the character of its demands coupled with the disappearance of the danger of Russian invasion wrought a change in the policy and attitude of the Government; it began to think of a counterpoise to the Congress with a view to keeping the Muslim and other sections of the public aloof from it. The services of Sir Syed Ahmed Khan, who occupied a very important position in the Muslim community and had all along been a consistent admirer of British government and of western education, were utilised for the purpose. Under the influence of Mr. Beck, the British Principal of the M. A. O. College, Aligarh, founded by him, Sir Syed came to believe that an Anglo-Muslim alliance would be more conducive to the interests of his community than an alliance with the Hindus. He therefore set up the Anglo-Muslim Defence Association with the objective of supporting measures designed to strengthen British rule in India and spreading the feelings of loyalty to the Crown among his co-religionists. He also started the Muslim Education Conference which held its sessions simultaneously with those of the Congress but at different places so that Muslims may not be able to join the latter. This was the beginning of Muslim separatism from the Congress.

1909

When the Morley-Minto Reforms were on the anvil, the Government of India took a further step in the execution of its policy of Divide and Rule which had far-reaching repercussions on the political life of the country. It decided to introduce the vicious system of separate communal representation for the Muslims. Mr. John Morley was opposed to it, but had to yield to the Government of India otherwise his Indian Councils Act of 1909 would not have been passed by Parliament. Succeeding reforms saw the extension of this principle to the Sikhs, Europeans and other interests and classes.

The Muslim League came into existence in 1906. The story of the Muslim demand for separate representation and of the formation and fortunes of the Muslim League will be told in a different chapter.

**Government Attitude.**— The growth of extremist group within Congress, the appearance of terrorism in Bengal, Maharashtra and Madras, and the agrarian unrest in the Punjab made the Govern-

ment of India nervous. It adopted the policy of repression and took stern measures to put down political extremism and revolutionary activities. It deported a large number of eminent leaders and prominent persons, including Lala Lajpat Rai and Sardar Ajit Singh, without trial. It sentenced Lokmanya Tilak to six years' imprisonment. A number of persons believed to be connected with terroristic activities were arrested and some of them executed. These trials and executions led to several political murders. The country was thus involved in a vicious circle : government's repressive measures led to revolutionary activities and these in turn intensified the former. The Government of India put on the statute book two Acts with a view to smothering political life in the country. One of them was the Seditious Meetings Act of 1907 which gave local authorities the power to prohibit any person from addressing any public meeting and place restrictions upon the holding of such meetings. The other was the Newspaper (Incitement to Offences) Act of 1908, which empowered a district magistrate to confiscate any printing press within his jurisdiction where a newspaper was being printed which incited people to violence.

The Government was anxious to secure the support of the moderate element in the Congress for its policy of repression ; it wanted to rally the Muslims and the landlords also to its side. To this end Lord Minto announced in April, 1907, that he had sent to the Secretary of State a despatch proposing political reforms on a liberal basis. This was the genesis of the Indian Councils Act of 1909, popularly known as the Morley-Minto Reforms.

## CHAPTER VII

### THE INDIAN COUNCILS ACT, 1909

**Introductory.**— Towards the close of the last chapter we described the grave political situation which had developed in the country and which led Lord Minto to think of constitutional reforms with a view to securing the support of the moderate elements in the Congress and of the landed aristocracy for the government in its policy of repression. It is interesting to note that two British journalists, Chirol and Sydney Low, who were on a visit to India and had observed the new spirit animating the younger people, also wrote to the Governor General saying that India could no longer be governed in the old way, and that an effort should be made to conciliate the Congress. Shri Gopal Krishna Gokhale, the doyen of Indian statesmen and the chief leader of the moderate section in the Congress, went to England and tried to convince John Morley, the Liberal Secretary of State for India, of the urgency of further constitutional reforms. It is believed that Morley wrote a letter to Lord Minto suggesting that the time was appropriate for introducing further reforms in India. This letter is regarded as having set in motion the process which culminated in the Indian Councils Act of 1909, with which the names of Lords Morley and Minto are indissolubly connected. It is not necessary to examine the question whether the initiative for constitutional reforms came from Lord Minto or from Lord John Morley ; what concerns us is the fact that it was the political situation in India which led the British authorities both in England and here to plan constitutional changes.

In fairness to Lord Minto it should be added that the external ① pressure of political unrest and seething discontent among the youthful section of the Indian people was not the sole factor which led him to think of constitutional reform ; the impulse to it was in part internal also. This is borne out by the following extract from the letter he wrote to the Secretary of State for India :

"But we, the Government of India, cannot shut our eyes to the present conditions. The political atmosphere is full of change ; questions are before us which we cannot afford to ignore, and which we must attempt to answer ; and to me it would appear all important that the initiative should emanate from us, that

the Government of India should not be put in the position of appearing to have its hands forced by agitation in this country or by pressure from home—that we should be the first to recognise surrounding conditions and to place before His Majesty's Government the opinions which personal experience and a close touch with the everyday life of India entitle us to hold.'

It should also be noted that in 1904, and again in 1905, the National Congress had demanded that the legislative councils should be expanded and that the proportion of elected members should be raised to one half. It also demanded that the budget should be subject to the vote of the Council. It went further and claimed that Indians should be appointed to the executive councils in India and to the Secretary of State's Council in England. The creation of advisory boards in all districts throughout the country whom the head of the district was bound to consult in all important matters of administration concerning the public, the separation of the judicial from executive functions, the recruitment of the judicial branch of the Indian Civil Service from the legal profession in India, and a reduction of military expenditure were among the other demands made by the Congress.

Both Lord Minto and Lord Morley were prepared to concede some of these demands in some measure. But the drafting of the proposals was a lengthy and time-consuming process; particularly, because of the need of consulting important bodies and individuals in each province before arriving at decisions. Lord Minto appointed a small committee of his executive council to go into the question and submit its report. The proposals of the Government of India based on the report of this committee were embodied in a despatch sent to the Secretary of State for India. A lengthy correspondence took place between Lord Morley and Lord Minto as a result of which the former formulated his proposals for reform in a despatch dated November 27, 1908. They found expression in the speech delivered by him in the House of Lords on December 17. (Their main objects were: (i) to increase the strength of the legislative councils, (ii) to make them more representative by increasing the proportion of elected members and substituting election for nomination, and (iii) to give them greater freedom of discussion.)

(The Bill embodying these proposals was introduced in the House of Lords in February, 1909. It became law before the end of May.) It was couched in wide and general terms, and left the

details, and even some matters of principle, to be determined by the authorities in India by regulations.

*Provisions of the Act.*— The following were the main provisions of the Indian Councils Act, 1909, as supplemented by the regulations made under it :

1. *Size of the Legislative Councils.*— The size of all the legislative councils, central as well as provincial, was materially increased. The maximum number of members for the Governor General's Council was raised from 16 to 60; for the Legislative Councils of Bengal, Madras and Bombay from 20 to 50; and for that of U. P. from 15 to 50. The maximum strength was, in each case, exclusive of members of the executive councils where they existed. This was a very considerable increase, indeed. The demand of the Congress was substantially conceded.

2. *Composition of the Councils.*— The Act prescribed that at least one half of the additional members of the legislative councils of the Governor General and the Governors of Madras and Bombay, and at least one third of the members of the other legislative councils should be persons not in the civil or military service of the Crown. This left it permissible to maintain an official majority on each council. (But in view of the fact that in Bombay it was found possible to do without an official majority (in 1906 the Bombay Legislative Council consisted of 10 officials and 14 non-officials though to three of the latter seats officials might have been appointed at any time), it was decided to 'face the risk of abandoning the official majority in provincial councils; to rely partly on the use of the veto, partly on the statutory restrictions attaching to provincial legislation, to prevent the carrying of undesirable laws; and to trust to the concurrent powers of legislation possessed by the Governor General's legislative council for the enactment of necessary laws which the provincial councils refused.') The regulations made under the Act created non-official majorities in all the provincial legislative councils, and maintained an official majority only in the Governor General's Legislative Council which was to contain not less than 25 elected and not more than 35 nominated members. It must however be remembered that a non-official majority did not always mean a majority of elected members; the officials and

\* *Report on Indian Constitutional Reforms, section 76.*

nominated non-officials could, and did, constitute a majority in all the provincial legislative councils except in that of Bengal where alone there was an elected majority. This also was a great advance on the Act of 1892, and met the Congress demand.

This means that the legislative councils constituted under the Morley-Minto Reforms contained three types of members. The members of the Executive Council of the Viceroy, or of the Governor or Lt. Governor who were its ex-officio members constituted one class; the second group consisted of nominated non-officials, and the third of elected representatives of the people.

(iii) *Recognition of the Elective Principle.*— Whereas the Indian Councils Act of 1892 had carefully avoided recognition of the elective principle and had recommended nomination on the basis of recommendation, the Act of 1909 gave direct and explicit approval to the principle of election for the return of representatives to the various legislative councils. But this recognition was halting; it was qualified in a twofold manner. Firstly, it was to work alongside the principle of nomination. Not all the additional members were to be returned by election; some of them were to be nominated. Secondly, and this is a more serious drawback— a large number of the elected members were to be returned by *indirect* election. It was only the Muslim representatives, and the representatives of the Presidency corporations, universities, chambers of commerce and the planting community who were to be *directly* elected. The reason for the adoption of indirect election through municipal, district and local boards in the case of provincial legislative councils, and through the non-official members of the provincial councils in the case of the central legislative council, was that in the immense diversity of interests and opinions found in India 'representation by classes and interests was the only practicable means of embodying the elective principle in the constitution of the councils.'\*

In regard to the method of election another point deserves special attention. The Morley-Minto Reforms introduced the principle of communal electorates which was destined to play an exceedingly unhealthy and vicious role in the political life of the country in the years to come. When Lord Morley wrote to the Government of India suggesting reforms in the popular direction, a hint was thrown

\* Report on Indian Constitutional Reforms, section 75.

from some interested quarters to the Muslims that the Governor General would be glad to receive a deputation of representative Muslims from all parts of India. The deputationists were advised to express sentiments of loyalty to the Crown, show grateful appreciation of the step the Government wanted to take by introducing reforms, and to express the apprehensions of the community that if the principle of election was introduced without conceding separate representation to the Muslims, it would prove detrimental to their interests. The deputation did wait upon Lord Minto and it did demand separate and weighted representation for the "Muslims. Lord Minto was very glad to express his entire accord with the deputationists in their demands. Much against his judgment and wish, Lord Morley was compelled by the Government of India to give his assent to this vicious principle which meant the 'creation of political camps organised against each other', and taught 'men to think as partisans and not as citizens'.\*

(iv) *Enlargement of Functions.*— The Act of 1909 enlarged the functions of the legislative councils considerably. Under the Act of 1881 their functions were purely legislative; the so-called legislative councils were merely committees by which the executive obtained advice and assistance in legislation. The Act of 1892 gave them the power to discuss the budget after it had been accepted by the executive, but they could not move resolutions on it or divide the house on them. The Act of 1909 empowered them to discuss the budget fully before it was finally settled, and to propose resolutions on it and to divide the house on them. But certain heads of revenue; e. g., customs, tributes from States, military works, were not open to discussion. Certain heads of expenditure were also excluded from discussion; e. g., interest on public debt, defence, political pensions, ecclesiastical charges. Members could move resolutions, not only on the budget but also on any matter of general public importance, and divide the house on them. The resolutions, if passed were only recommendations to the executive authority which it was not bound to accept. According to Lord Morley, the Government 'will deal with these resolutions as carefully, or as carelessly, as they think fit'. There were, however, certain matters on which no resolutions could be moved, e. g., matters affecting Native States. Any resolution could be disallowed

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\* *Ibid* : page 229.

by the head of the government acting as the President of the Legislative Council. The right to ask questions was enlarged by allowing the member who asked the original question to put a supplementary one.

(v) The Governor General, the Governors of Presidencies and Lieutenant Governors having executive councils were empowered to appoint vice-presidents who would act for them and preside over the meetings of the executive councils in their absence.

(vi) The maximum number of the ordinary members of the executive councils for Madras and Bombay was raised from two to four. Two of the members were to be persons who at the time of their appointment had been in the service of the Crown in India for at least twelve years.

(vii) The Governor General in Council was given the power to establish by proclamation executive councils for lieutenant governors' provinces, but except in the case of Bengal, such proclamation could be disallowed by either house of British Parliament. The proclamation giving an executive council to U. P. was disallowed by the House of Lords in 1915.

Mention may be made here of another important step taken by the Secretary of State, though it does not form part of the Act of 1909. It would be recalled that the National Congress had demanded the appointment of Indians to the executive councils of the Governor General and the Governors, and also to the India Council of the Secretary of State. These demands were also satisfied. In 1907 two Indians, Sir K. G. Gupta and Syed Hussain Bilgrami were made members of the India Council; and in March, 1909, Mr. Satyendra Prasanna Sinha, who was later on made a peer, was given a seat on the Viceroy's Executive Council. It was in pursuance of this policy of associating Indians with the work of administration that Indians were subsequently appointed as members of the executive councils for Bengal, Madras, Bombay, U. P. and Bihar.

**Assessment of the Morley-Minto Reforms.—**(That the Morley-Minto Reforms constituted a great advance on the Indian Councils Act of 1892 no one can deny. It raised high hopes in the moderate circles. The Congress which met at Madras in 1908 wel-

comed the outlines of the reforms contained in Lord Morley's despatch and passed a resolution conveying its thanks to the Secretary of State for them. Gopal Krishna Gokhale regarded it as 'an exceedingly important step' and thought that its provisions would 'very largely modify the bureaucratic character of the existing administration'. The presence of Indians on the executive councils was expected to eliminate the influence of racial considerations in the formulation of policies and the determination of large questions. The presence of non-official majorities in provincial legislative councils was calculated to give them some sort of control over finance, and to enable them to influence the executive. In thinking that the Morley-Minto Reforms offered elected Indians 'responsible association with the administration' Gokhale was over-optimistic. (A realistic analysis of the provisions of the Act of 1909, and the trend of speeches made in Parliament by Lord Morley and others would show that it was not at all designed to inaugurate any new policy in regard to Indian administration. The changes it introduced in the machinery for recognising the aspirations of educated Indians to a share in the government of their country differed in degree and not in kind from those made by the earlier Acts. One and the same principle underlies the three Acts of 1861, 1892, and 1909, which mark three successive stages in the slow evolution of representative institutions in our country and thus possess an inner continuity.) This was clearly enunciated by Lord Dufferin in his despatch extracts from which have been quoted on a previous page. We may state the principle once again in the words of the noble Lord himself :—

'We should be falling into a great error if we were to relax in the slightest degree our grasp of the supreme administration of the country..... As long as we hold firmly to this principle and remain fully alive to our own imperial responsibilities, I believe that both with safety and advantage we can give full play to the legitimate and praiseworthy ambition of loyal, patriotic and educated classes in India.'

That the Act of 1909 does not deviate from this principle to the slightest extent is clear from the assertion of Lord Morley that the reforms were not meant to lead to parliamentary government. Endorsing the contention of Lord Dufferin that the Government of India did not aim at responsible government he wrote as under :—

'Your Excellency's disclaimer for your government of being "advocates of

representative government for India in the Western sense of the term" is not any more than was to be expected..... While repudiating the intention or desire to attempt the transplantation of any European form of representative government to Indian soil, what is sought by Your Excellency in Council is to improve existing machinery, or to find new, for recognising the natural aspirations of educated men to share in the government of their country. I need not say that in this design you have the cordial concurrence of His Majesty's Government.'

In this connection his oft-quoted words 'If it could be shown that this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I, for one, would have nothing at all to do with it', come to mind. It must be remembered that Lord Minto was a conservative and not a liberal ; he was no advocate of representative government for India, and firmly believed that the government of India must remain autocratic.

While strictly adhering to the principle of retaining complete grasp of the supreme administration in British hands, the Act of 1909 went to the utmost extent in conciliating the Moderates (who were in complete control of the National Congress at that time) by expanding the legislative councils, increasing the number of elected Indians in them, and making them 'serve the purpose of an inquest into the doings of the Government by conceding the very important rights of discussing administrative matters and of cross examining Government on its replies to questions.'\*

The point we have been trying to stress is that the Morley-Minto Reforms did not contemplate the transfer of power to the people even to the smallest extent. What elected Indians could hope to achieve from them was to influence the executive. In a word, what Lords Morley and Minto wanted was to give India a form of government in which the executive would be in a position to invite to its councils representatives of all interests which were capable of being represented, but reserve to itself predominant and absolute power. Such a form of government may be called *constitutional autocracy*. In the words of the authors of the Report it sought

'to fuse in one single government the two elements which they discerned in the origins of British power in India. They hoped to blend the principle of autocracy derived from Moghul emperors and Hindu kings with the principle of constitutionalism derived from the British Crown and Parliament.'

This extract from the Montford Report lays bare what may be

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\* Report on Indian Constitutional Reforms, section 79.

regarded as the most characteristic feature of the Morely-Minto Reforms and which distinguishes them from the reforms introduced by the Acts of 1861 and 1892. Notwithstanding the disclaimer of Lord Morley, the Act of 1909 did amount to an attempt to introduce the principle of constitutionalism in the Indian system. The autocracy of the irremovable executive was diluted by the requirement that it was bound to consult representatives of all interests which were capable of being represented. It abandoned once for all the old conception of councils as mere advisory bodies to the executive government, as mere legislative committees of the government, and converted them into legislatures by enlarging their functions so as to include the right to inquire into and criticise the doings of the government. In view of this extension of the powers of the legislatures it may be said that, in one respect at least, the difference between the Act of 1909 and the earlier Acts came very close to being one of kind; it was not merely one of degree. But herein also lay the chief weakness of the Morely-Minto Reforms. Its effort to blend the two incompatible principles of autocracy and constitutionalism into one system of administration could not succeed in the long run; sooner or later the principle of constitutionalism was bound to challenge the principle of autocracy and throw it overboard. The expectation of the Government of India that 'the aristocratic elements in society and the moderate men, for whom there was no place in Indian politics, would range themselves on the side of Government, and oppose any further shifting of the balance of power and any attempt to democratise Indian institutions' was destined to disappointment.\* Within less than a decade of their working it was found out that the Morley-Minto Reforms 'afforded no answer, and could afford no answer, to Indian political problems'.† They had failed to satisfy Indian aspirations, and the Indian question had to be re-opened and re-examined. The way was being prepared for the Montford Reforms of 1919.

It is worth while studying the reasons on account of which the Morley-Minto Reforms failed to afford any solution of the Indian political problem. Their fundamental inadequacy lay in the retention of the principle of autocracy. What nationalist India demanded after

\* *Montford Report*, section 73.

† *Ibid*, section 81.

1907 was Swaraj or self-government; the country was reverberating with echoes of the magic mantra given by Lokmanya Tilak: 'Swaraj is our birth-right, and we shall have it'. She could no longer be satisfied with legislative councils which had no power. In the second place, a system in which the entire responsibility for the administration and power remained with the government and the legislature had no other function than that of criticism was inherently unsound; it could not endure for long. So long as provincial governments remained subject to the Government of India, and the Government of India to the Secretary of State and Parliament, the bonds of authority could not possibly be loosened. 'Because the relaxation of parliamentary control had not been contemplated the Government of India could not relax their control over local governments. The sphere in which the councils could affect the Government's action both in respect of finance and administration was therefore closely circumscribed. Again and again a local Government could only meet a resolution by saying that the matter was really out of its hands. It could not find the money because of the provincial settlements; it was not administratively free to act because the Government of India was seized of the question; it could therefore only lay the views of the council before the Government of India.'\*

In the Central Legislature the debates lacked life and the proceedings bore an air of unreality. The official members were not expected to ask questions or move resolutions; and when it came to voting they always supported the Government. The nominated non-officials usually did likewise. Since the elected members were in a minority the result of voting was generally a foregone conclusion. Very naturally, the proceedings became somewhat farcical. Since the elected members could never hope to make their voice effective, they were driven to think more of display than they would otherwise have done; their questions and resolutions could not be informed by a true sense of responsibility. 'Such a situation', write the authors of the Report, 'even if it had not been aggravated by external causes, might easily give rise to difficulties: the plan afforded no room for further advance along the same lines. Only one thing remained to do, and that was to make the legislative

\* Report on the Constitutional Reforms, section 100.

and administrative acts of an irremovable executive entirely amenable to the elected councils.'

In a word, it can be said that the Morley-Minto Reforms failed to achieve a lasting solution of the Indian problem because there was no place in them for *responsibility*, which is 'the savour of popular government'.

**Other Causes of the Failure of the Reforms.**— Besides this fundamental weakness, the Morley-Minto Reforms suffered from some other defects also which invited criticism, generated resentment, and greatly contributed to their failure. First : the system of indirect election and the highly restricted nature of the franchise diminished their representative character. The electorate for the provincial councils consisted of members of the district, taluka and municipal boards ; and for the Central Legislature, of the elected members of the provincial councils. Election to the Central Legislative Council thus became doubly indirect. Except in the case of members returned from the Muslim electorates, and from special bodies like Chambers of Commerce and the Landlords Associations, there was no real connection between the primary voter and the member who sat in the legislative council. The restricted nature of the franchise can be understood from the fact that in the nine general constituencies representing non-official members of provincial legislative councils the average number of voters was twenty-two and in one the number was nine only. For the provincial councils the constituencies were larger, but in no case did the electorate exceed a few hundred persons.

Second : the feature which was bitterly criticised by nationalist opinion was the creation of separate communal electorates for the Muslims. Lord Morley was opposed to the system : he had suggested common or joint electorates with reservation of seats for the Muslims. But this proposal was not acceptable to the Government of India who were intent upon giving the Muslims separate representation. Their motive was to pull back sixty-two million Muslims from 'joining the ranks of the seditious opposition'. The creation of separate electorates for the Muslims meant that whereas the non-Muslim citizens of the country would be represented indirectly in the central and provincial legislatures, the Muslims would have the advantage of direct representation. The result of different franchise

for the Muslims was that whereas 'a Parsee, a Hindu, or a Christian who may be paying an incometax on three lakhs a year is not entitled to a vote to which his Mohamedan fellow-subject, who pays an income tax on only three thousand a year or land revenue in the same sum, is entitled. Hindu, Parsee and Christian graduates of thirty years' standing, and men like Sir Gurudas Bannerji, Dr. Bhandarkar, Sir Subramania Iyer, and Dr. Rash Behari Ghose have not been given a vote, which has been given to every Mohamedan graduate of five years' standing.\* Equally serious was the anomaly of giving some Mohamedans the benefit of voting in more than one constituency. It may also be added that the regulations framed by the governments of Bengal, Madras and Bombay under the Act of 1909 restricted the right to seek election to the provincial legislative council only to members of the Municipal and District Boards. This meant the exclusion from the legislative councils of these provinces of many men of learning and light who could have made useful contribution to their proceedings. In other words, it can be said that the regulations made by the Government of India and the Governments of the Provinces under the Act were reactionary in nature ; they smashed the hope expressed by the National Congress in 1908 that the details of the Morley-Minto Reform Scheme would be worked out in the same liberal spirit in which its main provisions were conceived. While in 1908 the Congress had expressed its great satisfaction with the proposals of Lord Morley, in 1909 it was constrained to pass a resolution recording its strong disapproval of the creation of separate electorates and the unjust electoral system. The Regulations were made with the purpose of including a large number of landlords and of Mohamedans who could be relied on to oppose any further attempt at democratisation of the system of government. The Government seemed to be bent upon setting one community against the other through its appeal to class interest. This was the view of the *New Age*, a London weekly. It wrote that the proposals of the government were 'tainted all over with a degrading appeal to class interest and always upon class interest'.

The main defects of the Morley-Minto Reforms may be summed up in the following words of Dr. Zacharias. He writes that

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\* Presidential Address of Pt. Madan Mohan Malaviya at 1909 session of the National Congress.

**their essence**

'lay in conceding what was at once evacuated of all meaning. Thus the elective principle of democracy was adopted ; yet at the same time the anti-democratic communal representation was added. The official majority was done away with : but the elected members remained in a minority. The membership was considerably enlarged ; but an emphatic disclaimer was issued simultaneously that the new councils in no way meant the introduction of a parliamentary system. The Council of India and even the Viceroy's Executive Council were opened to some very few and very select Indians : but the liberal aspect of admitting Indians to the *arcana* of government could in no way disguise the fact that real power remained safely in British hands.\*'

The authors of the Montford Report assign some more reasons for the failure of the Reforms. They say that some of the antecedent conditions on which success depended were lacking. 'There was no general advance in bodies ; no real setting free of provincial finance ; and in spite of some progress, no widespread admission of Indians in greater numbers into the public service.' These are important causes of the failure of the Reforms. It was this realisation that some power should be transferred to the people of India and the provinces should be somewhat freed from the control of the Central Government which determined the direction in which the Montford Reform Scheme was to proceed.

**Merits of the Morley-Minto Reforms.**— Inspite of the fact that the Morley-Minto Reforms failed to satisfy Indian aspirations and could afford no lasting solution of the Indian question, they do constitute an important stage in our constitutional development. Their true significance lies in the fact that they closed one chapter in it which was begun by the Indian Councils Act of 1861 ; they carried to the furthest practicable point the previous line of constitutional development. As Shri V. P. Menon has so well put it in his volume, *The Transfer of Power in India* :

'They had enlarged the legislative councils and the sphere of their deliberations. They had admitted the need for increased representation and the desirability of generally securing non-official approval to Government legislation ; and by conceding the important right of discussing administrative matters and of cross examining Government on its replies to questions they had done much to make the councils serve the purpose of an inquest into the doings of Government. But the responsibility for the administration remained undivided. The conception of a responsible executive, wholly or partially amenable to elected councils was not admitted. Power remained with the official Governments, and in consequence

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\* Zacharias : *op. cit.*, page 158.

there was no lessening of the burdens which subjected local Governments to the Government of India, and the latter to the Secretary of State and Parliament. The people were given increased opportunities of influencing the Government, but the principle of autocracy remained.' (Pages 13-4.)

No further progress along this line was possible. By demonstrating that Indians would no longer put up with the principle of autocracy the failure of the Morley-Minto Reforms opened the way for the Montagu-Chelmsford Reforms. The next logical step was the Government of India Act of 1919 which introduced the principle of responsible government to a limited extent in the provincial sphere.

Before describing the circumstances which led to the famous Declaration of Mr. Montagu of August 20, 1917, his visit to India and to the Report on Constitutional Reforms, we may add a few words about the Indian High Courts Act of 1911, and the Durbar held at Delhi in 1911.

**The Indian High Courts Act of 1911.**— It raised the maximum number of judges from sixteen to twenty and authorised the establishment of new high courts as occasion required. It also permitted the appointment for a period not exceeding two years of temporary additional judges to a High Court. It may be mentioned that as a result of the powers granted under this Act, High Courts were created at Patna (1916), Lahore (1919), and Rangoon (1922).

**The Delhi Durbar.**— The Delhi Durbar was held on Dec. 12, 1911, to mark the accession of King George V as the Emperor of India. Never before had a British king set foot on Indian soil, much less worn his imperial crown in India. The occasion was thus unprecedented. It was generally expected that exceptional announcements would be made on the occasion. Three announcements were made, two by the King Emperor himself, and the third by the Governor General on his behalf. These announcements had been the subject of discussion in the British Cabinet, at the India Office, and in the Governor General's Executive Council, and of correspondence between the Viceroy and the Secretary of State. But the secret had been well kept. Except the few persons at the top none knew the nature of the decisions.

In his first announcement the King-Emperor expressed his personal feelings and those of the Queen Empress, and in the

second the transfer of the capital from Calcutta to Delhi. The reasons for the transfer were administrative. It was realised that in course of time the just demands of the people of India for a larger share in the government of their country would have to be satisfied. This could be possible only by giving the provinces a large measure of self-government, which in turn required that the Supreme Government should not be closely associated with the government of any province. This necessitated the transfer of the head quarters of the Government of India from Calcutta to some other place. Delhi was found the most suitable place for many reasons.

Bengal was to become a Presidency with a governor and executive councillors like Bombay and Madras. This meant the annulment of the partition. But mere annulment would have resulted in the presidency of Bengal becoming unwieldy. Therefore it was decided to create a separate province of Bihar, Orissa and Chhota Nagpur under a Lieutenant Governor, and to separate Assam from Bengal and constitute it into a Chief Commissioner's province. Delhi also had to be separated from the Punjab and made into a province under a Chief Commissioner. Professor Keith rightly observes that this announcement involved a change of policy and should not have been made without giving the House of Lords and the Opposition in the House of Commons an opportunity to criticise it. But uncommon things sometimes happen in politics ; this was one of them. The nature of the occasion was a sufficient excuse for it.

Effect was given to this announcement by a series of notifications and proclamations resting on some power earlier granted by some Act of Parliament. Supplementary legislation required for the purpose was passed in England and in India. The Secretary of State for India in Council made a formal declaration that the Governor General of India would not function as the Governor of Bengal and that a separate Governor for it would be appointed. By a proclamation issued on March 21, 1912, Lord Carmichael was appointed Governor of Bengal. By a proclamation dated March 22, 1912, a new province was carved out of the territories of the Presidency of Fort William and named Bihar and Orissa. It was placed under a Lieutenant Governor. By another proclamation of the same date Assam was separated from East Bengal and made into a separate province under a Chief Commissioner. An Act of 1912 gave Bihar

and Orissa an executive council. The same Act authorised the establishment of legislative councils for Assam and C. P.

In 1915 Parliament passed an Act consolidating all the numerous Acts relating to the government of India. It came to be known as the Government of India Act, 1915. It repealed the unrepealed provisions of fortyseven Acts and made the statute law relating to India easier to understand and also easier to amend. It possess little constitutional significance and may be passed over.

## CHAPTER VIII

### THE IMPACT OF WORLD WAR ON INDIA

Introductory.— We saw above that the Government expected the stabilisation of the political situation in India as a consequence of the Morley-Minto Reforms. It was their fond belief that the aristocratic element in Indian society would side with them in opposition to any further attempt to shift the balance of power in favour of democracy. In England also the view was generally held that a considerable time must elapse before any advance beyond the situation reached by the Act of 1909 could be thought of. Reporting to Lord Minto on his confidential talks with Shri Gopal Krishna Gokhale at the India Office, Lord Morley wrote as under :

‘He made no secret of his ultimate hope and design— India to be on the footing of a self-governing colony. I equally made no secret of my conviction that for many a day to come— long beyond the short span that may be left to us— this was a mere dream.’\*

Lord Crew, who succeeded Lord Morley at the India Office, made a statement in 1912 which frankly disavowed the idea of Dominion Status as the goal of British policy in India. The conviction underlying the statement was that Indians were incapable of, and unfit for, the parliamentary type of government. No further progress along the lines of the earlier Acts was possible. But the situation was changing fast. In India the moderate section which had initially hailed the Morley-Minto Reforms with great satisfaction soon grew dissatisfied with them. Even Gokhale was disillusioned. He realised that once the Government of India had made up their mind on any issue, nothing that the Indian members on the Central Legislative Council would say could make any change in it. It is interesting to note that one of the Acts placed on the Indian statute book after the Act of 1909 had been passed was the Press Act of 1910. The Moderates therefore began to ask for more than what the Act of 1909 had given them. Under the impact of the World War the claims of Indian Nationalism rose very high. In 1915 the National Congress declared that the time had come when the pro-

\* Quoted by Coupland : *India, A Restatement*, page 107.

vincial councils should be given effective control over the provincial executive. In 1916 it asked the British Government to declare its intention to confer self-government on India at an early date. It is interesting to see how the World War gave a great fillip to the national movement in India and helped create a new mentality and a new outlook among the people. It also produced some change in the outlook of the British authorities and indirectly led to the historic pronouncement of Mr. Edwin Samuel Montagu, Secretary of State for India, in the House of Commons on August 20, 1917.

**India and the War Effort.**— When England entered into the War provoked by the murder of an Austrian Prince by a Serb in 1914, she was not adequately prepared for conducting it. In her hour of need she appealed to India and to the Dominions for help. India responded splendidly to the appeal and lost no time in equipping an expeditionary force to fight England's battles in France, Mesopotamia and other places. Her contribution in men, money and material was great ; in the words of Lord Hardinge she was bled absolutely white during the first weeks of the war. The contribution was made with the unanimous consent of all parties in the country ; there was no discordant voice and no anti-British feeling. There were several reasons for this 'somewhat unexpected unanimity of Indian loyalty'. Firstly, the wise and sympathetic way in which Lord Hardinge had managed the affairs of the country during his Viceroyalty had much to do with it. He had earlier espoused the cause of Indians in South Africa against the Government of that country ; he had also insisted that Indian troops should be sent out 'not as auxiliaries, nor into zones of minor strategic importance, but as the complete equals of their European comrades into breaches on the western front, on the holding of which, then and there, the outcome of the war itself depended.'\* Secondly, the Indian leaders took at their face value the pronouncements made by European statesmen from time to time ; they began to think that after the war a new heaven would descend upon the country and they would get a large measure of self-government. Whereas in 1885 the prospect of a self-governing India was taken to be a far-off event, something shrouded in the mists of a distant future, in 1916 it appeared to be within easy reach. For, had not Mr. Asquith declared at the very beginning of

\* Zacharias : *op. cit.*, page 163.

the war that in future the Indian question would be viewed from a new angle of vision? Had not Mr. Lloyd George declared at a later date that the principle of self-determination was to be applied to every nation, small or big? Had it not been declared on behalf of the Allies that the War was being fought to make the world safe for democracy, that no nation, however small or weak, would be forced to live under a form of government it did not like, and that every nation, big or small, would have the right of self-determination? The people of India and their leaders accepted these declarations at their face value; these statements and the view expressed by the British Prime Minister that Indians 'were joint and equal custodians of our common interests' produced in the minds of Indians the conviction that henceforth India was to occupy an honoured and proud place in the comity of nations and that her sons would be valued and trusted as comrades and friends. The hopes thus aroused found expression in the resolution passed at the Lucknow session of the National Congress held in 1916. Inspite of its length it may be reproduced here. It ran as under:

'That having regard to the fact that the great communities of India are the inheritors of ancient civilization, and have shown great capacity for government and administration, and to the progress in education and public spirit made by them during a century of British rule, and further, having regard to the fact that the present system of government does not satisfy the legitimate aspirations of the people and has become unsuited to the existing conditions and requirements, the Congress is of opinion that the time has come when His Majesty, the King Emperor, should be pleased to issue a proclamation announcing that it is the aim and intention of British policy to confer self-government on India at an early date; that this Congress demands that a definite step should be taken towards self-government by granting reforms contained in the scheme prepared by the All Indian Congress Committee and adopted by the All India Muslim League, and that in the constitution of the Empire, India shall be lifted from the position of a dependency to that of an equal partner in the Empire along with the self-governing dominions.'

The impact of the war was felt in two other directions also. It was indirectly responsible for the change in the aims and objects of the Muslim League, and for the rise of the Home Rule movements under the leadership of Lokmanya Tilak and Mrs. Annie Besant. The crumbling of the Islamic kingdoms in Morocco and Persia had led Indian Muslims to cling more closely than ever before to Turkey as the great surviving Muslim power in the world. When Turkey was threatened, first by Italy and next by the Balkan League, the

excited fancy of the Indian Muslims saw in these events a concerted plot of the Christian nations to make an end of Islam as a temporal power. The neutrality of Great Britain in the conflict between Turkey and Italy in 1911 had already produced some bitterness among them ; now when they saw Great Britain fighting against Turkey in the World War they began to drift more and more towards nationalism. Thinking that it would be better from the British point of view if the Indian Muslims associated themselves with the Congress than with the Khilafatists, the Muslim League was induced to accept self-government for India on colonial lines as its goal. This paved the way for the Congress-League agreement in the political field. The result was the Congress-League scheme of reforms to which reference is made in the resolution adopted by the Congress at Lucknow in 1916, quoted above.

It may not be wrong to associate the rise of the Home Rule Movements under the leadership of Lokmanya Tilak and Mrs. Annie Besant with the European War. The war provided a stimulus for them. Tilak started the League at Poona in April, and Mrs. Besant at Madras in September, 1916. The aim of the two leagues was to quicken political awakening among the masses ; they preached the message of swadeshi, national education and home rule for India. At a later stage the two movements merged into one, and the Congress made a good use of its organisation to push propaganda in support of the Congress-League scheme. Students played an active role in popularising Mrs. Besant's Home Rule League in Madras, which the Government of Madras did not at all like. It took action against Mrs. Besant's League and arrested her and her two co-workers, Messrs. Arundale and Wadia. There was great agitation in the country against their arrest and the Government released them after some time. Action was taken against Tilak by the Government of Bombay ; he was ordered to furnish two sureties for Rs. 10,000 each and execute a personal bond for Rs. 20,000. The Bombay High Court quashed the order on appeal.)

**Effect of the War in England.**— The War had much effect on public opinion in England in regard to the Indian question. We have already seen that the British Prime Minister, Mr. Asquith, had declared at the very beginning of the War that the Indian question would be viewed from a new angle of vision in the future, that

Indians were 'joint and equal custodians of our common interest'. This change in the angle of vision was caused by the very generous response of India to the British appeal for help in the war effort. India had trusted England, and England felt grateful. The entry of the United States of America in the War on the side of the Allies at a later date gave wide currency to the idea of self-determination for all nations, big as well as small. There was also the talk about the world being made safe for democracy. These ideas could and should be applied to India also : so some noble-minded Englishmen held. Moreover, the war had revived the old tradition of British championship of freedom. All these factors prepared the ground for a favourable British response to the Indian demand for an early declaration that the aim of the British policy was to confer self-government on India at an early date.

**The Mesopotamian Muddle.**— It is quite likely that however grateful the British statesmen might have felt for the help given by India in the prosecution of the war, and whatever declarations they might have made about the 'new angle of vision' from which they would view the Indian question, and about self-determination and democracy, they did not contemplate any big change in the constitutional structure of India. Otherwise they would not have kept discreetly silent on the question of political reforms. But an event happened which changed the situation entirely and made official British opinion realise that the despotic and irresponsible rule of the bureaucracy should cease and responsible government introduced in India. This was the publication of the report of the Parliamentary Mesopotamian Commission in May, 1917.

The campaign against Turkey in Mesopotamia had been left completely in the hands of the Government of India ; the British War Office had no control over it until February, 1916. The campaign was a great military disaster ; it was conducted inefficiently and without proper care for the medical needs and ordinary comforts of the soldiers. A Parliamentary Commission was appointed to go into the question. Its report was a revealing document. It showed that 'that wonderful system of government in India, which amongst the British general public had hitherto been believed to be above any possible question of inefficiency, was proved to have failed, and to have failed utterly... ... because it had complete carte

*blanche* to do or not to do what in its own wisdom seemed good. The system itself was found to have been quite unsound ; the old myth that only the "silent, strong man on the spot" could effectively get things done "east of the Suez" had been shattered\*. One of the members of the Commission, Col. Josiah Wedgwood, recommended that Indians should be allowed a large share in the government of their own country. The defects of the Indian system of government were thus brought home to the British public in a vivid manner. The Secretary of State for India, Mr. Austin Chamberlain, had to resign ; and Mr. E. S. Montagu succeeded him. He was known to be a sincere friend of India and his appointment raised high expectations. He announced Government's new policy with regard to India in the House of Commons on August 20, 1917.

This new policy and the way in which effect was given to it through the enactment of the Government of India Act of 1919 will form the theme of the next chapter.

\* Zacharias : *op. cit.*, page 170-71.

# **PART III**

## **INDIA UNDER THE CROWN**

### **Growth of Responsible Government**

#### **(Acts of 1919 & 1935)**

#### **CHAPTER IX**

#### **THE GOVERNMENT OF INDIA ACT, 1919**

**Introductory.**— We saw in the last chapter that before the war British authorities, both in India and in England, were convinced of the unsuitability of the parliamentary system of government to Indian conditions. Lord Dufferin, Lord Morley, and Lord Crew had, at different times, given expression in clear and unmistakable terms to the commonly held belief that India was not qualified for responsible government. The European War, however, changed the situation radically. British statesmen found it difficult to reject the Indian plea that if the War was being fought to make the world safe for Democracy, India also should be put on the road to self-government; that if the principle of self-determination could be applied to the politically backward Arabs in the Turkish Empire, it should be applied in the case of India too. British statesmen were thus forced to look at the Indian problem from 'a new angle of vision'. The Report of the Parliamentary Commission on Mesopotamia clinched the issue; it convinced British statesmen that the highly centralised and irresponsible machinery of the Indian Government required a radical change. The Government of India had been tried and found wanting in a crisis. A departure from the past was urgently needed in the interests of the British Empire itself.

**( Mr. Montagu's Pronouncement.**— Since the Act of 1909 represented the penultimate stage in the process begun by the Indian Councils Act of 1861, the radical change demanded by the new situation could be nothing less than to cross the line between representative and responsible government, and declare that the goal

of British policy in India was the establishment of responsible government on colonial lines. This is what Mr. Edwin Samuel Montagu, who had succeeded Sir Austin Chamberlain as the Secretary of State for India, did in the historic pronouncement he made in the House of Commons on August 20, 1917. In the course of it he said :

‘The policy of His Majesty’s Government, with which the Government of India are in complete accord, is that of increasing association of Indians in every branch of the administration, and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. The progress in this policy can only be achieved by successive stages. The British Parliament and the Government of India must be the judges of the time and measure of each advance.’\*

The first part of this declaration of policy contained nothing new : it was simply the reiteration and making explicit of what was implicit in the meagrely fulfilled promise contained in the oft-quoted clause of the Charter Act of 1833. A small number of Indians had already been associated with administration by being appointed to the executive councils of the Viceroy and the provincial Governors under the Morley-Minto Reforms, and a larger number with the work of legislation in the provinces and at the Centre. But the second part of it italicised above constituted a great and radical departure from the old and traditional policy ; it was novel and revolutionary. In the past whenever the question of Indian constitutional advance had been mooted, British statesmen had always declared the unfitness of Indians for parliamentary institutions. In this connection we may recall the emphatic declarations of Lord Morley and Lord Crew. The latter had further added that the experiment ‘of extending a measure of self-government practically free from parliamentary control to a race not our own is one which cannot be tried.’ (Italics ours.) Now, it was precisely this parliamentary type of government which the historic pronouncement of August 20 envisaged for India. What was held to be an impossibility in 1909 and in 1912 was found to be feasible and desirable in 1917.

It must be clearly understood that His Majesty’s Government did not promise to establish full responsible government in India immediately. Mr. Montagu clearly and unambiguously stated that

\* Italics ours.

responsible government was to be realised gradually and through successive stages. He said: 'I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India on whom the responsibility lies for the welfare and advancement of the Indian peoples must be the judges of the time and measure of each advance, and they must be guided by the cooperation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.'

It would be observed that the term Dominion Status does not occur anywhere in the Declaration of August 20. Nay, even the word 'self-government' was avoided; the term 'responsible government' was used in its place. This change in the draft was made by Lord Curzon. Nevertheless, it was implicit in this declaration that some day India was to attain Dominion Status. Nothing less than this is contained in the phrase 'realisation of responsible government in India as an integral part of the British Empire'. As Coupland says, this implies that India 'could acquire a real nationhood which could be embodied, as in the Dominions, in a national system of government'.\*

Notwithstanding the revolutionary nature of its proposal to introduce responsible government in India, Mr. Montagu's declaration of policy was cautiously worded. It did not give complete satisfaction to Indians who had been kept expectant for long. But it eased the political situation a good deal and kept Indians quiet during the most critical period of the War.)

**Montagu's visit to India.**— With a view to the drawing up of a scheme of reforms, in consultation with Indian leaders and officials of the Government of India, which would implement the Declaration, Mr. Montagu came to this country in November, 1917, and stayed until May, 1918. He has given an account of his stay in India in his interesting book, *An Indian Diary*. He met top-ranking leaders of the National Congress, both extremists and moderates, and also of the Muslim League. He was invited by Mrs. Besant and Tilak to attend the Congress session, but was prevented from doing so by the bureaucracy. He wished to proceed far enough in

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\* Coupland: *India: A Restatement*, page 111.

his proposals for reform, but the attitude of the Indian bureaucracy acted like a deadweight; he was alarmed to find that the idea of reforms had sunk very little in the minds of the bureaucracy who seemed to think that things would go on as before.

**Montford Scheme.**— In consultation with Lord Chelmsford Mr. Montagu drew up the Report on Indian Constitutional Reforms, popularly known as the Montford Scheme, which was published in July, 1918. After having studied the past development and the working of the Morley-Minto Reforms, and in view of the rising demand of Indians for self-government, the authors of the Report came to the conclusion that no further development along the old lines was possible; some measure of responsibility for their own government had to be given to Indians. They also realised that in a country like India which had no parliamentary traditions behind it, the introduction of full responsible government all at once was impracticable; it would have invited certain break-down and disaster. They came to the conclusion that self-government had to develop slowly and gradually. But the first step— it was to be a substantial step— was to be taken. To meet these requirements, the Report laid down the following formulae:

(i) 'There should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control.'

(ii) 'The provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative, and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities.'

(iii) 'The Government of India must remain wholly responsible to parliament, and saving such responsibility its authority in essential matters must remain undisputable, pending experience of the effect of the changes now to be introduced in the provinces. In the meantime, the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased.'

(iv) 'In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and Provincial Governments must be relaxed.'

The scheme of the constitutional advance put forward by Mr. Montagu and Lord Chelmsford in their Report was based upon these four cardinal points ; namely, popular control over local bodies, partial responsibility or dyarchy in the provinces, increased opportunities of influencing Government in the centre but without any responsibility, and relaxation of the control of the Secretary of State to the degree demanded by the extent to which power was transferred to the people. The principle of separate communal representation was subjected to a critical examination ; but inspite of recognising its anti-national and anti-democratic character, the authors of the Report found it impossible to throw it overboard in view of the existing situation and opined that it might have to be extended to the Sikhs.

**Birth of the Liberal Federation.**— The publication of the Montagu-Chelmsford Report in July, 1918, became a signal for the accentuation of the differences between the extremists and the moderates ; it destroyed the political unity of the Indian National Congress. The two sections held radically divergent views on the reform proposals. The extremists found them unsatisfactory and unacceptable, unless materially altered. The declaration of Mrs. Besant that the Reforms were 'ungenerous of England to offer and unworthy of India to accept', and that of Tilak that they were 'unsatisfactory and disappointing' sum up the extremist view. The Extremists declared the Montford proposals disappointing and unsatisfactory because they fell far short of the national demand as embodied in the Congress-League scheme. Whereas Indians had demanded provincial autonomy and partial responsibility at the Centre, the Montford proposals conceded only partial responsibility in the provinces and introduced no element of responsibility in the Centre.\*

\* The authors of the Montford Report studied the proposals set forth in the Congress-League scheme but found the principles on which its main proposals were based essentially unsound. In the words of Mr. Montagu the chief fault of the scheme was that it did not attempt to realise responsible government, but left an irremovable executive at the mercy of a legislature which could paralyse it but not control or direct it. The Congress-League scheme provided a legislature of 125 members in a major province, and of fifty to seventy-five members for a minor

The Moderates, who were convinced of the honesty and sincerity of purpose of Mr. Montagu and had arrived at some sort of understanding with him before he sailed for England, took the view that, on the whole, the reforms constituted a great advance on the then existing situation, and regarded them as progressive and satisfactory enough. They held that they should be accepted in the best interests of the country, and efforts should be made for their modification, particularly in regard to the proposals regarding the Centre. They were apprehensive lest the whole scheme should be crushed out of existence between the denunciation of the Extremists on the one side, and on the other side the opposition of the Europeans who described them as revolutionary and were not prepared for conceding anything more to Indians than self-government in the local bodies. Acting on the principle of half a loaf being better than none, they decided to strengthen the hands of Mr. Montagu.

As they did not like to be a party to the wrecking tactics of the Extremists, they decided to stay away from the special session of the

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province. Four-fifths of the members were to be directly elected by the voters on a wide franchise. The Central Legislature was to consist of 150 members, four-fifths of whom were to be elected. Part of the elected members were to be directly elected and part by the elected members of the provincial legislatures. Except in regard to certain specified heads of income and expenditure which were reserved as imperial, the provincial councils were to have full control. The Central Legislature was given powers to deal with matters in regard to which uniform legislation for the whole country was desirable ; a vague general power of supervision and superintendence was reserved for the Government of India. At the head of each province there was to be a Governor to be appointed usually from outside the ranks of the Indian Civil Service. He was to be assisted by an executive council of six persons, three of whom were to be Indians elected by the elected members of the provincial legislature. The rest were to be appointed by the Governor, preferably from outside the Indian Civil Service. All legislative councils were to elect their own presidents. More freedom was to be given to members of the legislatures to put supplementary questions and move motions of adjournment. Resolutions passed by the legislature were to bind the government unless vetoed by the governor in council, and if passed again after an interval of not less than one year, were to be absolutely binding. The scheme also contained an agreement according to which the Muslims were to be represented through special electorates, and were given over-representation in provinces where they were in a minority. We agree with Mr. Montagu that the scheme was unpracticable ; it was unsound in so far as it associated men together in the executive who derived authority from different sources. Some of them were to be responsible to the provincial legislature and some to the Secretary of State.

Congress convened at Bombay for the consideration of the Report, and organised a new party of their own. Surendranath Bannerjea, who had played a notable part in the establishment of the Indian Association of Bengal which was a fore-runner of the National Congress and had paved the way for the emergence of the latter, now took the lead in organising the Moderates in Bengal and started the National Liberal League of Calcutta.

With a view to the preservation of unity within Congress ranks and carrying the Liberals with them, Tilak, Mrs. Besant and others modified their opposition to the Montford scheme. The following compromise resolution was adopted at the Bombay special session held in August 1918 :

“That this Congress entirely disagrees with the formula contained in the said Report that the Provinces are the domain in which the earlier steps should be taken towards the progressive realization of Responsible Government, and that the authority of the Government of India in essential matters must remain indisputable pending experience of the effect of the changes proposed to be introduced in the Provinces, and the Congress is of opinion that simultaneous advance is indispensable both in the Provinces and the Government of India.”

But the Moderates abstained from attending the special session and held a special conference of their own at Bombay in November. There they passed a resolution welcoming the proposals as constituting a distinct advance on the system of Government as it then existed, both as regards the centre and the provinces, and also as a real and substantial step towards the progressive realization of responsible government in the provincial sphere. They regarded the proposals as fulfilling the terms of the announcement of August 20, 1917.

The result of the secession of the Moderates was that the Congress, which had been a body of moderate opinion since 1907, came under the control of the Extremists. At the Delhi Congress a new spirit was visible; the whole tone of its resolutions had altered. It talked of certain fundamental rights of the Indian people which should always be observed. It also made an attempt to take the case of India before other nations, in this case the United States of America, to obtain their support for self-govern-

ment. An appeal was formally put before the Foreign Relations Committee of the American Senate that the constitution of the League of Nations should be so amended that every signatory to the Covenant of the League should be made to provide democratic institutions for the people who lived under its government. The following is a part of the resolution on self-determination which was passed by the Delhi Congress: 'In view of the pronouncements of President Wilson, Mr. Lloyd George, and other statesmen, that to ensure the future peace of the world, the principle of self-determination should be applied to all progressive nations, this Congress claims the recognition of India by the British Parliament and by the Peace Conference as one of the progressive nations to whom the principle of self-determination should be applied.' The Congress further demanded that India should be represented at the Peace Conference through the elected representatives of the people and appointed Tilak, Gandhiji and Syed Hasan Imam to act as its accredited representatives, if and when the necessity arose.

(**Government Proposals.**)—The Montford Report simply formulated the principles on which the Government were expected to frame their proposals for the revision of the Indian constitution. Before the proposals could be placed before Parliament in the form of a Bill much spade work had to be done. Three Committees were appointed to go into questions relating to the functions of Central and Provincial governments, franchise, and the relations between the Secretary of State for India, the Government of India, and the Provincial Governments. The Government of India also expressed its views on the proposals made in the Report and made suggestions which whittled down some of the proposals. On the basis of the Montford Report, the reports of the three Committees, and the views expressed by the Government of India, the British Government introduced a Bill in the House of Commons on May, 29, 1919. It was referred to a Joint Select Committee of both the Houses. This Committee sat from July to October, and examined seventy witnesses 'but none who could speak as representatives of the rural or working classes, of the landlords, or the martial elements.\* It suggested a number of modifications; but its main conclusions were in keeping with the views of the Govern-

\* Keith: *op. cit.*, page 246.

ment. The Bill was passed by both the Houses and received the Royal assent on December 25, 1919. It is known as the Government of India Act, 1919. Rules were framed under it in July, and elections to the new legislatures were held in November 1920. The new legislatures were inaugurated in the beginning of 1921.

Before proceeding to describe its main provisions, a few words about Devolution Rules made under it seem to be necessary.

**Devolution Rules.**— It would be recalled that the most vital feature of the Montagu-Chelmsford proposals was the introduction of partial responsible government in the provinces. This necessitated two things : (i) Demarcation of the sphere of provincial governments from that of the Centre and giving to the Provinces the largest measure of independence, legislative, administrative and financial, of the Government of India compatible with the due discharge by the latter of its own responsibilities ; and (ii) the division of the field of provincial government into two parts, one in which popular responsibility was to be introduced, and the other where administration was to be reserved to the Governor-in-Council. Both the objects were secured by means of Devolution Rules framed under the Government of India Act of 1919.

It is necessary to understand the nature and significance of devolution or decentralisation of authority which was absolutely indispensable for the introduction of partial responsibility in the provinces. For this purpose one should remember that the whole trend of British policy in India since the passing of the Act of 1773 was towards creation of a single, powerful government for all the territories of the Company in India. The governments of the various provinces were subject to the over-riding powers of the Central Government which was directly or indirectly in supreme control. For long the finances of the provinces were controlled by the Centre ; the former had no right to levy taxes or to spend money without the previous sanction of the Central Government. Power was thus centralised to a high degree in the Governor General-in-Council. The evil effects of this high centralisation were realised as early as the seventies of the last century when the first steps towards financial devolution were taken. Gradually the provinces were given greater freedom to collect taxes and spend money, and to administer their affairs. The Act of 1919 carried this process of devolution to its

full length. Without being made politically autonomous units (this was done by the Act of 1935) the Provinces were given the largest measure of independence of the Government of India, consistently with the due discharge by the latter of its own responsibilities. This was achieved by classifying the subjects of administration into two lists, one central and the other provincial. The Central List included subjects like defence, foreign relations, railways, posts and telegraphs, coinage and currency, tariffs and customs, public debt, civil and criminal law and procedure, shipping, major ports, etc., in regard to which uniformity of legislation and administration for the whole country is desirable. The Provincial List included subjects like local self-government, education, medical administration and public health, agriculture, industries and revenue, irrigation, forests, administration of justice, police and jails, etc., which do not require uniformity of legislation, and administration, but in regard to which diversity of administration to suit the different needs of the provinces may be essential. The last item in the provincial lists was the following: 'Any matter which, though falling within a central subject, is declared by the Governor General-in-Council to be of a merely local or private nature within the province.' The last item in the Central list was the following: 'All matters not included among the provincial subjects.' This means that residuary powers vested in the Governor General-in-Council.

It should be remembered that the division of subjects into central and provincial was a mere administrative arrangement; it did not signify any division of authority. It did not in any way limit the formal authority of the Government of India to legislate on any provincial subject. What Devolution sought to achieve was that the Central Government would not interfere in provincial matters unless the interests for which it was itself responsible were directly affected.

It may be pointed out that the division of subjects into Central and Provincial was neither very rigid nor clear-cut. It was not rigid in so far as the Centre was given concurrent powers of legislation on some subjects included in the provincial list (with the previous consent of the Governor General), and a province could also legislate for persons within its territories on a central subject with the previous consent of the Governor General. It was not clear-cut in so far as there was some over-lapping of subjects in the two

lists. For example, while some large heads like commerce and laws regarding property were included in the Central List, important sections like excise and laws regarding land revenue were allotted to the provinces.\*

The heads of revenue were similarly divided into central and provincial. All receipts from subjects included in the provincial list which included land revenue, irrigation, forests, excise on alcoholic liquors, stamps, registration fees, and minerals were credited to the provinces. They were also given the power to levy certain taxes specified in the Scheduled Taxes Rules, and to borrow money for certain specified purposes. But loans could be raised in India with the previous permission of the Governor General-in-Council and outside India with the permission of the Secretary of State. With the allocation of separate sources of revenues to the provinces, provincial finance was separated from central; the annual financial statement of 1921 introduced in the Central Legislative Assembly contained no reference to provincial budgets. This devolution was necessary to give the provinces the much needed freedom to plan, initiate and manage their affairs without too much dependence on and interference from the Centre. This should not be taken to mean that the provinces became autonomous; this was not possible so long as the form of government remained unitary. The Act of 1919 did not modify or change the unitary character of the Government of India; it did not contemplate anything like a federal constitution for the country. The Central Government continued to enjoy the power of making laws for all persons and places in British India even on provincial subjects; and the Provincial Governments were required by law to pay due heed to the orders of the Government of India and to keep the latter constantly and diligently informed of their proceedings and of other important matters.

The second thing was the division of the provincial subjects into two categories, one known as *reserved* and the other as *transferred*. Subjects like local self-government, public health and sanitation, medical administration, education other than European and Anglo-Indian, public works, agriculture and fisheries, cooperative societies, excise on alcoholic liquors and drugs, development of

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\* Punjiah: *Constitutional History of India*, page 148.

industries, libraries, etc., which afforded 'most opportunity for local knowledge and social service', and in which Indians showed themselves to be keenly interested and where mistakes would not be irremediable, were classed as *transferred*. They were to be administered by the Governor acting with his ministers. The ministers were to be responsible to the provincial legislature. Subjects like law and order, finance, land revenue, irrigation, famine relief, control of newspapers, etc., were classed as *reserved*; they were to be administered by the Governor-in-Council who was responsible to the Governor General and through him to the Secretary of State. When any question arose whether a matter related to a reserved or to a transferred subject it was to be settled by the Governor whose decision was final.

It should be borne in mind that there was no division of financial sources of revenue corresponding to the division between the transferred and reserved subjects; no separate sources of revenue were allocated for the administration of the transferred subjects. Neither was any separate executive staff appointed for the administration of the transferred subjects. These were serious shortcomings which had a prejudicial effect on the working of Dyarchy. But more of it in a subsequent section.

### Government of India Act, 1919

#### I. PREAMBLE

**Revolutionary Feature of the Act.**— After this introductory survey we pass on to a study of the main provisions of the Government of India Act of 1919 which deserves a more detailed treatment than could be accorded to any one of the several Acts passed by the British Parliament for the good government of India before it. This is because it marks the beginning of a new phase in our constitutional development. As has been stressed before, it inaugurated the period characterised by the growth of responsible government. 'It crossed the line between legislative and executive authority. Previous measures had enabled Indians increasingly to control their Legislatures but not their Governments. Some Indians, it is true, had been members of those Governments, but they had been officially appointed and responsible, like their British colleagues, to the Secretary of State and Parliament. Now Indians were to govern, so to speak, on

their own. They were to take charge of great departments of Provincial administration, not as official nominees but as the leaders of the elected majorities in their Legislature and responsible to them.\*

**Preamble to the Act of 1919.**— In view of its historic importance and the fact that some of the most important features of the Act of 1919 follow from it, the Preamble deserves to be reproduced and commented upon. It runs as follows :

'Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of the Indian administration and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire ;

'And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken ;

'And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples ;

'And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility ;

'And whereas concurrently with the gradual development of self-governing institutions in Provinces in India, it is expedient to give these Provinces in provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities ;

'Be it therefore enacted, etc.....'

Although the Act of 1919 was superseded by the Act of 1935, the Preamble to it stood and formed part of the constitutional law of India till 1947. It is therefore necessary to dwell a little longer on it and elucidate its significance.

① The first point to be noted is that it makes India an integral part of the British Empire. It does not envisage a free India outside

\* Coupland : *India, A Restatement*, page 113.

the Empire. To say nothing of the moderates, even the extremists of those days did not demand complete independence. Closely connected with the emphasis on India remaining within the Empire is the fact that the Preamble clearly and definitely asserts the sovereignty of the British Parliament over her and also its responsibility for her welfare and administration. The time and manner of each successive advance towards the distant goal of full responsible government was to be determined not by the people concerned but by Parliament, an outside authority. This feature was severely criticised by Indians as it definitely denied to them the right of *self-determination* for the vindication of which the Great War of 1914-18, (and one might add, the second World War also) was ostensibly fought. In his Presidential address at the 1918 session held at Delhi, Pandit Madan Mohan Malaviya demanded that the representatives of the people of India should have the right to determine future steps towards responsible government. Deshbandhu C. R. Dass in his undelivered presidential address meant for the 1922 session resented the doctrine that Parliament was to determine the time and manner of each advance. It should also be noted that further advance on the road to self-government was made dependent on the co-operation of Indians and the extent to which they demonstrated their fitness and sense of responsibility to the full satisfaction of the British Parliament, as if Indians were 'perpetual infants and the British Parliament their safe guardian, and the former had to satisfy the latter that they were good boys and had a sense of responsibility.'

3 In the third place, the Preamble lays down the two main principles of the reform scheme. The first is the introduction of partial responsibility in the provinces, and the second is the conferment on them of the largest measure of independence, legislative, administrative and financial, of the Government of India (but not the largest measure of *self-government*) consistently with the due discharge by the latter of its own responsibilities. The implication is that the Government of India must remain wholly responsible to the British Parliament. The Preamble thus makes no reference to the changes introduced by the Act in the Central Government and the Home Administration of Indian Affairs.

## II. THE GOVERNMENT OF INDIA

**Introductory.**— Though the most vital and revolutionary

change introduced by the Government of India Act of 1919 consisted in the introduction of partial responsibility in the provincial sphere, we propose to deal first with the modifications it effected in the functions, structure, and methods of the Government of India. These modifications were necessitated by the fact that the machinery of the central government was no longer equal to the needs of the times ; particularly, in view of the introduction of partial responsible government in the provincial sphere. The Act made many significant alterations in the composition, powers and functions of the central legislative organ. It was enlarged and made more representative, and given larger opportunities to influence the government. But the relation between it and the executive branch was left unaltered in fundamentals. It made some changes in the composition and character of the executive organ also, but they were not so important as those made in the legislative organ. Some of the difficulties of the Act arose out of its attempt to bring together a somewhat popular or democratic legislature and an irresponsible and autocratic executive.

**The Central Executive.**— The Act of 1919 did not make any fundamental change in the nature and composition of the executive branch of the Government of India. The executive authority continued to be vested, as before, in the Governor General-in-Council. In view of the changed relations with the provincial governments and the possibility of increased volume of work it was considered desirable to remove the statutory limit upon the membership of the Executive Council imposed by an earlier Act, the Consolidation Act of 1915. In actual practice, however, no advantage was taken of this removal, and the Executive Council for a long time consisted of six members besides the Governor General and the Commander-in-Chief. It was in 1941 that the Executive Council was expanded under pressure of events in the country. The Act also modified a previous rule about the qualifications of the Law Member and made pleaders of Indian High Courts of not less than ten years' standing eligible for appointment as Law Member. The Act did not lay down qualifications for the members of the Executive Council, except for the important proviso that at least three of them must be persons who must have served in India under the Crown for at least ten years. This proviso gave substantial representation to the Indian Civil Service in the Executive Council and went a long way in determining

its character and outlook. It stood in the way of the Council being converted into a body of ministers responsible to the legislature. This provision had to be deleted when the Executive Council became something like a cabinet in 1947 and all its members were Indians with Jawahar Lal Nehru at their head.

Although there was nothing in the Act to necessitate the appointment of Indians as members of the Executive Council, the number of Indians on it was increased from one to three.\* In this way the British Government tried to give effect to the policy of 'increasing association of Indians in every branch of the administration.' Their number remained three till 1941 when the Council was expanded. It should be noted that the important portfolios of Finance, Home Affairs and Defence were always placed in charge of Britishers; the relatively unimportant departments of Law, Education and Health, and Industry and Labour were entrusted to the Indian members.

Before concluding this topic it may be mentioned that the members of the Viceroy's Council were appointed by the King on the recommendation of the Secretary of State for India and held office for a period of five years. It may also be mentioned that the Commander-in-Chief no longer remained an extraordinary member; the distinction between ordinary and extraordinary members was abolished by the Act. He also ceased to be the Vice-President of the Council.

**The Governor General.**— Although the executive authority of the Government of India was vested in the Governor General-in-Council, and not in the Governor General alone, and the Governor General was required by law to carry out his functions with the advice and concurrence of his Executive Council, he had become the most important and powerful member of the executive. It could be said that he was not merely a part of a whole, but in a way, constituted the whole. This was because he was empowered to over-rule the whole or part of his Executive Council whenever he felt convinced that the advice given by it was wrong or harmful or when in his opinion the preservation of the peace and tranquillity of the country required such a step. The occasion for the use of such a step seldom arose; it was not easy for an executive councillor to

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\* This affords a good example of constitutional conventions in our country.

stand up against him— the whole atmosphere and traditions of the Council militated against a bold stand on the part of its members. Several causes contributed to the dominating position of the Governor General. Among them the more important were his exalted position as the representative of the King, high social status, almost continuous and direct contact with the Secretary of State for India, the rules of procedure which enabled him to act in the name of the Executive Council as a whole even if he consulted one member thereof, and above all, the fact that the members of the Council usually owed their appointment to the recommendation of the Governor General and looked up to him for further promotion as provincial governors.

In the words of a British writer the Governor General of India occupied 'the most responsible, as it is the most picturesque and distinguished office in the overseas services of the British Crown.' Few posts in the world carried the dignity, patronage, powers and emoluments associated with this office. He was appointed by His Majesty, the King of Great Britain, on the advice of his Prime Minister. His tenure was usually five years. His salary was Rs. 2,56,000 a year, and the country was required to spend another sum of about fourteen lakhs of rupees annually on him.

His powers were numerous and of a varied character ; they could be classified under three heads— administrative, legislative and financial. Together with his Executive Council he was entrusted with the task of administering the civil and military affairs of the Government of India and preserving peace and order in the country. As the President of his Executive Council he distributed work among its various members and made rules and regulations for transacting its business. He summoned its meetings at such places as he liked. He had vast patronage in his hands ; the members of the Executive Council were appointed by the Secretary of State usually on his recommendation, and they looked to him for recommendation for appointment as provincial governors. He summoned, prorogued and dissolved the central legislature, and could also extend its term under special circumstances. He had the power to stop the proceedings of any chamber on any bill or clause of a bill, if he thought that discussion on it would have a prejudicial effect on the peace and tranquillity of the empire. He could disallow

has been explained earlier, this was achieved by (i) demarcating a number of subjects as *provincial* and giving the provincial governments a large measure of freedom in administering them ; (ii) separating provincial finance from central and allocating separate heads of revenue to the provincial governments ; and (iii) distinguishing between transferred and reserved subjects in the provincial sphere and making the ministers responsible to the provincial legislature of the administration of the transferred subjects. The Instrument of Instructions issued to the Governor General directed him to exercise his powers of superintendence, direction and control over the provincial governments with a view to furthering their policies when such policies found favour with a majority of the members of the provincial legislature. The power of superintendence, etc., could be exercised over the administration of the transferred subjects only for the purpose of (i) safeguarding the administration of a central subject, (ii) safeguarding the interests of All-India Services, and (iii) settling disputes between provinces when they had failed to agree among themselves.

**The Governor General and the Secretary of State.**— For a proper understanding of the true character of the Governor General-in-Council as the highest executive authority in British India, a few words about the relationship between him and the Secretary of State for India-in-Council seem to be indispensable.

It had long been recognised that the ultimate authority to direct and control the affairs of the British territories in India was the Secretary of State for India-in-Council. The Government of India was subordinate to His Majesty's Government in Great Britain. When responsibility for the administration of Indian affairs was transferred from the Company to the Crown in 1858, the Secretary of State for India was set up as the Minister responsible for Indian affairs. He was vested with the authority to 'superintend, direct and control all acts, operations and concerns which relate to the Government or revenues of Indian.' In her Proclamation Queen Victoria directed the Governor General of India to be subject to all such orders and regulations as he might receive from time to time from the Secretary of State for India. The Act of 1919 did not make any change in this relationship ; it left the powers of the Secretary of State to superintend, direct and control all acts,

operations and concerns which relate to the Government or revenues of India theoretically unchanged and unimpaired. Constitutionally, the Governor General-in-Council was subordinate to the Secretary of State and bound to obey all the orders the latter might issue. In case of difference of opinion between him and the Secretary of State, the Governor General had either to accept the views of the latter or resign. Many a Secretary of State proceeded on the theory that the Government of India were the agents of the Imperial Government in Great Britain.

In practice, however, it was impossible for the Secretary of State to administer the affairs of India from such a long distance. He was therefore driven to leave large powers and responsibilities to the Government of India. A powerful and influential Viceroy could sometimes make the Secretary of State the convenient mouthpiece of his policy in England. Even a man like Lord Morley was driven to accept the principle of separate representation for the Mohammedans because of the insistence of the Government of India. All things considered, one cannot but accept the following statement of Sir Tej Bahadur Sapru, an ex-Law Member of the Government of India, as a correct and adequate account of the relationship between the Government of India and the Secretary of State : 'The residuum of control, both administrative and financial, exercised by the Secretary of State in relation to the Government is so enormously large that it is impossible to hold, constitutionally, that the Government of India enjoys any large measure of independence.'

The Secretary of State exercised control over the Government of India in several ways, visible and invisible. The invisible methods which were not always known to and understood by the outside world included private and confidential communications which the Governor General did not always disclose to the members of his Council. That all projects of legislation should have had the previous assent of the Secretary of State, and that all variations in taxation and all measures affecting the revenues of the country should be similarly placed before him, and other requirements of a similar nature constituted the direct and visible method by which he controlled and directed the Government of India.

Such a control made the position of the Government of India awkward in its relation to the Central Legislature which contained

a very large majority of elected non-official members. It often brought it into direct conflict with the legislature which could and sometimes did reject the measures introduced by the Government. The theory of the subordination of the Indian Government to the Secretary of State might have been necessary at a stage when the Legislative Councils were mere advisory bodies with official majorities ; it was certainly incompatible with the existence of a legislature with an elected majority and an area of work which was large enough to make the position of the Government difficult. It resulted in the rejection of important measures like the Finance Bill and their subsequent certification by the Governor General.

**The Central Legislature.**— The Act of 1919 made several important alterations in the constitution, composition and powers of the Indian legislatures, central and provincial. Here we shall deal with the central legislature only.

The Central Legislature was made bicameral. In place of the old Supreme Legislative Council two legislative chambers were brought into existence ; the lower and more democratic body was styled the Legislative Assembly and the upper and oligarchic body was known as the Council of State. This was a radical change. The second chamber was introduced to act as a check upon the lower house which was to contain a definite elected majority of not less than five-sevenths. In the second place, the size of the legislature was considerably enlarged. The Legislative Assembly was to consist of 140 members with the provision for increasing the number of its members by means of rules ; and the Council of State was to contain not more than sixty members. Actually the Assembly contained 145 members. The central legislature thus came to contain 205 persons in place of the sixty-eight members of the Supreme Legislative Council as constituted under the Act of 1909. In the third place, the Governor General ceased to be the presiding officer of the legislature and therefore its member also. But he continued to be its integral part. It should be borne in mind that according to the Act of 1919 the Central Legislature consisted of the Governor General and the two chambers as named above. In the fourth place, the old idea of having an official majority in the central legislature was given up. For the first time, an elected majority was introduced in it. Even the Council of State was given an elected majority.

Lastly, large financial and deliberative powers were conceded to it in order to make the Government of India more susceptible to the force of public opinion, but without introducing the principle of responsible government. In short, we may state that with the idea of making the executive more liable to be influenced by popular sentiment and increasing the indirect influence of the legislature, the legislative machinery was completely overhauled. It was considerably enlarged and democratised, and larger powers were granted to it.

It is not necessary to go into details about the composition of the Legislative Assembly and the Council of State. Only this much may be stated that the elected seats were distributed among the various provinces, and further in each province among the various communities and interests. In other words, the principle of Separate Communal Representation was observed in their composition as far as the Muslims, the Sikhs and Europeans were concerned. Special constituencies were created for Landlords and Indian Commerce. Depressed Classes, Anglo-Indians, Indian Christians, and Labour were given representation through nomination. The franchise for the Assembly was based on property qualifications which were not uniform throughout the country. They varied from province to province, and sometimes in the same province according to the wealth of the people in different regions. Speaking generally, a person who was assessed to pay income-tax, or paid land revenue or rent above a certain minimum, or municipal tax above a fixed minimum was entitled to get his name registered as a voter. The tenure of the Assembly was fixed at three years. The Governor General could dissolve it earlier and could also extend its term. The Assembly was given the right to elect its own presiding officer subject to the approval of the Governor General after the expiry of the first four years during which it had a President appointed by the Governor General.

The Council of State, whose tenure was fixed at five years, was less democratic and more oligarchic and conservative than the Assembly. It also had an elected majority ; it had 34 elected members as against 19 officials and 6 nominated non-official members, but the proportion of elected to the nominated members was much smaller in it than in the Assembly. For a long time its President

was appointed by the Governor General and used to be an official. At a later stage it was given the power to elect its own President. The franchise for it was much higher than that for the Assembly. In some provinces persons paying income-tax on an income of not less than Rs. 30,000/- per year, or paying land revenue of not less than Rs. 2,000/- a year could become voters. In others the corresponding figures were lower. In the election of 1925 the total number of voters for the Council of State was about 17,000 in the whole of British India. Women were not eligible for becoming its members or voters. Every member of the Viceroy's Executive Council was an official member of either the Assembly or the Council of State. He could not be a member of both the houses but could attend the sessions of both and take part in their debates.

**Powers of the Legislature.**— The functions of the central legislature were also considerably enlarged. Members were allowed to move motions for adjournment of the house to discuss urgent questions of public importance. A motion of adjournment allowed by the President could be disallowed by the Governor General. The right to put supplementary questions was extended to the whole house and was not confined to the person who asked the question originally. The house could discuss the budget and divide on votable grants. Members could refuse or reduce expenditure on certain items of expenditure but could not propose new items or increase expenditure under any head. Portions of the budget dealing with interest charges, defence, foreign policy, salaries of the Governor General and his Executive Council, ecclesiastical department, etc., could be discussed by the members only with the previous permission of the Governor General. These were considerable additions to the powers granted under the Morley-Minto Reforms. But certain restrictions were imposed upon them which should be noted.

The Governor General was authorised to prevent either chamber from passing, discussing, or permitting introduction of a Bill, clause, or amendment which in his opinion affected the safety or tranquillity of any part of British India. As has been stated earlier, he could disallow any question or motion of adjournment permitted by the President on the ground that it adversely affected the maintenance of peace and order in the country. Measures relating to the public

debt of India, revenues of India, religious usages of British subjects, army, navy, and foreign relations, any provincial subject, or repealing or amending an Act of a provincial legislature, or an ordinance issued by the Governor General could not be introduced in the legislature without the previous sanction of the Governor General. It could not alter, amend or repeal the Government of India Act or any other Act passed by the British Parliament and applicable to India.

We may also refer to the power of certification granted by the Act to the Governor General. If either Chamber failed to pass a Bill, or made amendments in it not acceptable to the Government, the Governor General could certify that it was essential for the interests of British India, and thereupon the Bill, upon the signature of the Governor General, would become Law in the form recommended by him. A measure passed in this manner had to be placed before both the houses of Parliament and could not take effect until it received the Royal assent. The Governor General had also the power to refuse his assent to any Bill passed by the legislature.

In the financial sphere also the powers of the Assembly were greatly limited. Though the budget as a whole was open to discussion (certain items in it could be discussed only with the previous sanction of the Governor General), about 75 % of it was non-votable. The salary and allowances of the Governor General, monies required for the foreign and political department, expenditure on defence, public debt, ecclesiastical department, etc., were not subject to the vote of the Assembly; they were a charge on the Indian revenues. About 25 % of the budget was subject to the vote of the Assembly; in this sphere it could reduce a demand made by the Government or refuse it completely. Any grant reduced or refused by the Assembly could, however, be restored by the Governor General if he thought it necessary for the discharge of his responsibilities. The Assembly had thus no real and effective control over finance. It must never be forgotten that it was no part of the intention of the framers of the Act to subject the Government of India to the control of the legislature to even the smallest extent. The Assembly was given the right to discuss and vote on the Finance Bill. On several occasions it rejected the Finance Bill by way of protest against the Government, and every time it was certified by the Governor General,

The two houses of the Central Legislature could pass resolutions; they were, however, not binding upon the executive. They were mere recommendations which the executive might accept or ignore at will. It would thus appear that the legislature could not control the executive; all that it could do was to exercise some influence over it.

Before concluding this account of the powers of the central legislature, it may be added that, except as regards finance, the two houses had equal and concurrent powers. No bill could be presented to the Governor General for his assent unless it was passed by both the houses in the same form. A bill passed by one house and rejected by the other, or passed by the latter with such amendments as were not acceptable to the first house could not be presented to the Governor General unless he exercised his power of certification. The annual budget was placed before both the houses for discussion simultaneously; but the right of voting supplies was the exclusive privilege of the Assembly; the various demands for grants were not placed before the Council of State.

Finally, we may say that under the Act of 1919 the two houses of legislature were given the right to frame rules for regulating their business. Previously this right belonged to the Governor General who used to preside over the Legislative Council.

**Conflict Between the Two Houses.**— Under the bicameral system there is the possibility of conflict between the two houses, specially where they are given equal and concurrent powers. Constitutions usually provide for methods of solving such conflicts. The Act of 1919 provided for three different modes of removing differences between the Assembly and the Council. They were Joint Committees, Joint Conferences and Joint Sittings. A Joint Committee was intended more for the prevention of differences arising between them than for solving them after they had arisen; it could anticipate differences and try to remove them. When there arose a difference between the two chambers, they could agree to a Joint Conference consisting of an equal number of representatives from each to solve it. A Joint Sitting of the two houses could be convened only by the Governor General by notification in the Gazette, if a bill was passed by one house and was not passed by the other within six months. It was not found necessary to have recourse to a Joint Conference

or a Joint Sitting because the Governor General could always resolve the differences between the two house by certifying a bill in the form he liked. Certification by the Governor General was the way of saving a bill from lapsing on account of unreconciled differences between the two chambers. This method was resorted to when the executive was keenly interested in passing a bill. The Princes' Protection Bill was rejected by the Assembly but was passed by the Council of State. The Governor General certified it and it was thus placed on the statute book.

**The Position Till 1947.**— As the federal portion of the Government of India Act of 1935 did not come into force, the composition of the central executive and legislature was governed by the Act of 1919 till the passing of the Indian Independence Act of 1947. The power of the Executive in relation to the administration of Indian affairs remained the same as before, but its power to superintend and control the provincial governments had to be withdrawn in view of the introduction of provincial autonomy under the Act of 1935. To the extent and in the spheres in which power in the provinces was transferred to the people, the government of a province could not be made subject to the authority of the Government of India.

In a subsequent chapter reference will be made to the fact that by way of meeting the demand of the Indian people for the establishment of a *national* government in the country, the British Government expanded the Executive Council. Till 1941 it consisted of eight members of whom three used to be Indians. In October 1941 its strength was increased to thirteen of whom eight were Indians. In 1945 the strength was further increased to sixteen with eleven Indians. But the five most vital and important departments were still held by Britishers; they were the Foreign and Political Department, the Army and Defence Department, the Home Department, the Finance Department, and the Railways. It was only when a national government was established in terms of the Cabinet Mission Plan in 1946 that the Executive Council became wholly Indian and the Governor General became something like a constitutional chief executive. He became an entirely constitutional head only after the passing of the Independence of India Act in 1947.

**Summary of the Relation between the Executive and the Legislature.**— Although the main points in regard to the relation

between the executive and legislative organs of the Government of India have been made plain enough in the course of the preceding discussion, the importance of the subject justifies a separate section even at the cost of a little repetition.

It should always be borne in mind that it was never the intention of the authors of the Montford Reform Proposals to concede even an iota of responsibility at the Centre. The Act of 1919 therefore kept the Government of India wholly responsible to the Secretary of State. It meant that its authority in essential matters was to be kept indisputable. Therefore the Governor General was armed with the power of restoring taxes and grants reduced or refused by the legislature, certifying bills rejected by it, and promulgating ordinances. Resolutions passed by the legislature were mere recommendations which the executive might or might not accept. A successful motion of adjournment passed by the Assembly or the throwing out of an important government measure did not entail the resignation of the executive. The legislature was thus not in a position to *control* the executive. The latter was irremovable by it. All that the legislature could do was to *influence* the executive. The intention of Mr. Montagu was to make the Government of India responsive to the legislature, but not responsible to it. The Act therefore enlarged the Legislature, made it more representative of the people and increased its powers without giving it the right to control the executive.

### III. PROVINCIAL GOVERNMENT

**Introductory.**— In so far as according to the authors of the Report on Indian Constitutional Reforms the Provinces were to be the domain in which the earlier steps towards the progressive realisation of responsible government were to be taken and the Government of India were to remain wholly responsible to Parliament, the changes introduced by the Government of India Act of 1919 in the constitution of the provincial governments were far more vital and radical than those introduced in the constitution of the Central Government. We shall therefore deal with them more fully and at greater length than was found necessary in our account of the Central Government.

It should be remembered always that the Act of 1919 was not designed to introduce full responsible government in the

provinces all at once. Its growth was to be gradual ; only the first steps in that direction were to be taken. The object was secured through the establishment of a novel type of government known as *Dyarchy*. It was established in the nine Governors' provinces ; namely, Bengal, Bombay, Madras, Bihar and Orissa, the United Provinces, the Central Provinces, the Punjab, Assam and Burma. What were known as Chief Commissioners' Provinces were excluded from its scope. It was later introduced in the N. W. F. P. This meant that the old distinction between Governors' Provinces and Lieutenant Governors' Provinces was abolished. The Act of 1935 abolished Dyarchy and established full responsible government in the provinces, limited though it was by the special powers and responsibilities of the Governor.

**Meaning of Dyarchy.**— Dyarchy is a compound of two Greek words, *di* meaning two, and *archia* meaning rule. It thus signifies double government or government by two rulers. As a system of administration introduced in the provinces by the Act of 1919 it meant the division of the sphere of provincial government into two distinct and separate parts, each administered by a different set of individuals appointed in different ways and bearing different relations to the legislature and to the Governor.

The provincial subjects were classified into two parts. One part comprised subjects like local self-government, education other than European and Anglo-Indian, public health and sanitation, hospitals, dispensaries and asylums, development of industries, agriculture and fisheries, and co-operative societies in which there was greater scope for social service and which required a greater degree of local knowledge. These were known as *transferred* subjects and were to be administered by the Governor acting with his ministers who were responsible to the provincial legislature. The other group comprised subjects like land revenue, famine relief, irrigation, forests, administration of justice, police, jails, finance, factories and labour problems. They were known as *reserved* subjects and were to be administered by the Governor with the help of executive councillors who were not responsible to the provincial legislature. In other words, the provincial executive consisted of two halves : (i) Governor acting with his ministers ; and (ii) Governor acting with his executive councillors. In their

manner of appointment, tenure of office, and constitutional relations to the Governor and the provincial legislature the ministers and the councillors differed widely from each other. We shall first describe the method of appointment, tenure, etc., of the ministers, next that of the councillors, and finally say a few words about the role of the Governor in the administration of the province.

**The Ministers.**— They were entrusted with the administration of the transferred subjects in each province. The Act did not put any maximum or minimum limit on their number as it did regarding the number of councillors. In practice, there were three ministers in some provinces, e. g., Bengal, and two in others. They were appointed by the Governor and held office during his pleasure. No official could be appointed as a minister, and no person could remain a minister for more than six months, unless he became a member of the provincial legislative council. In other words, though it was open to the Governor to appoint a person as a minister who was not a member of the legislature, such a person was bound to vacate office if he failed to find a seat for himself in the legislature within six months. As a matter of fact, however, the Governors chose their ministers from amongst the leading elected members of the legislative councils. In so far as they were responsible to the provincial legislative council and their salaries were subject to its vote their tenure practically depended upon the will of the legislature. According to the letter of the law, however, they held office during the pleasure of the Governor. Nevertheless, no Governor could have retained a minister in office in whom the Legislative Council showed clear want of confidence. In the U. P. the Governor had to dismiss, much against his wishes, a minister against whom a vote of no-confidence was passed by the casting vote of the President of the Legislative Council. This shows that the parliamentary form of government had been established so far as the transferred subjects were concerned. The Joint Select Committee recommended that Ministers should have equality of status and pay with members of the Executive Council. The Act therefore provided that a minister might be paid the same salary as was payable to a member of the Executive Council unless a smaller salary was voted by the Legislative Council.

Under the parliamentary type of government the head of

the State has only nominal powers; even if he differs from the advice given to him by his popular ministers, he has to accept it. The only other alternative is to accept the resignation of the ministry. The Report on Indian Constitutional Reforms, however, did not contemplate that from the outset 'the Governor should occupy the position of a purely constitutional head who is bound to accept the decisions of his ministers. Our hope and intention is that the ministers will gladly avail themselves of the Governor's trained advice upon administrative questions, while on his part he will be willing to meet their wishes to the furthest possible extent in cases where he realizes that they have the support of popular opinion. We reserve to him a power of control, because we regard him as generally responsible for his administration, but we should expect him to refuse assent to the proposals of his ministers only when the consequences of acquiescence would clearly be serious..... But we do not intend that he should be in a position to refuse assent at discretion to all his ministers' proposals.\* In short, the Governor was expected to accept the advice given to him by his ministers, unless he saw sufficient reason to dissent from their opinion, in which case he could require action to be taken 'otherwise than in accordance with that advice'. In case the Governor refused to accept the advice of his minister, the latter had the option to resign; and the Governor, too, had the right to dismiss a minister with whose views he did not generally agree or who had lost the confidence of the legislature.

The Instrument of Instructions issued to the Governor contained directions as to the manner in which he was to deal with his popular ministers. It directed him to have due regard to the ministers' relations with the Legislative Council and to the wishes of the people of the province as expressed by their representatives in considering whether or not to accept their advice. He could override the advice if such a course was demanded by considerations of the safety and tranquillity of the province, advancement and social welfare of backward people or minorities, the interests of the public services, and for preventing religious or racial conflicts. He was also required to see that all orders issued by the Secretary of State or the Governor General-in-Council were duly complied with.

**Joint Ministerial Responsibility.**— Since collective responsibi-

\* Report on Indian Constitutional Reforms, page 142.

that the Governor was expected to play a very vital role in the new set up. He was to function as the connecting link between the responsible ministers and the irresponsible executive councillors, between popular or self-government and autocracy. Where it was not clear whether a matter came within the jurisdiction of the ministers or of the executive councillors, it was for the Governor to act as an informal arbitrator. It was 'his duty to see that the decision arrived at on one side of the Government is followed by such consequential action on the other side as may be necessary to make the policy effective and homogeneous'. His position was thus one of great responsibility and difficulty, and also of great opportunity. He was to hold the 'balance between divergent policies and different ideals, and, to prevent discord and friction.'

The Governor could take over the administration of one or more transferred subjects in an emergency. If a minister resigned and a successor was not immediately available, the Governor could take over charge of the subjects temporarily till a new minister was appointed. If it became clear that the administration of the transferred subjects could not be carried on according to the provision of the Act, the Governor General-in-Council with the previous sanction of the Secretary of State-in-Council could suspend the operation of the Act for as long as necessary, and the transferred subjects were to be administered like the reserved subjects. This happened in Bengal and the Central Provinces as a result of the tactics employed by the Swarajists.

It is not necessary to describe the mode of appointment of the Governor, his tenure, salary and allowances and other powers as the executive head of the Province.

The Act put the Governor of a province in a position to secure sufficient funds and necessary legislation for the proper administration of the reserved subjects if the local legislative council refused to sanction the sum he wanted or to pass a bill in the form he desired. Reference to his powers of certification and restoration of refused or reduced grants would be made in the section dealing with the powers of the legislature. Here we may say a few words about his powers in the field of finance.

Since finance was a reserved subject to be administered by the Governor with his executive councillors, his financial powers were

naturally large. No proposal for expenditure on any item could be placed before the Legislative Council except on his recommendation. He determined the amount to be spent on non-votable items which were not subject to the vote of the legislature. If the Legislative Council refused or reduced a demand for grant for any *reserved* subject, the Governor could restore it, if he thought such restoration necessary for the proper administration of the subject. He could not, of course, restore any cut made by the legislature in the demand for grant for a transferred subject. But if, in his opinion, expenditure was necessary for the peace or tranquillity of the province in an emergency, or for carrying on the administration of any subject, he was authorised to sanction it. If such expenditure referred to a transferred subject, he could authorise it to the extent of the sum provided for it in the preceding year's budget. Thus nothing could happen in the financial sphere against the will of the Governor.

**The Legislature.**—The Act of 1919 introduced several important and far-reaching changes in the composition, powers and functions of the provincial legislatures. The authors of the Montford Report had proposed that there should be 'in each province an enlarged legislative council, differing in size and composition from province to province, with a substantial elected majority, elected by direct election on a broad franchise, with such communal and special representation as may be necessary.' They wisely refrained from indicating the composition of each Legislative Council and laying down the franchise. All such questions were left to be determined by a special committee to be appointed for the purpose. The franchise, the representation of the different interests and other questions pertaining to elections were settled by the Franchise Committee. The authors of the Report contented themselves with recommending that the system of indirect elections should be swept away and that limitations on franchise should be determined not on any *a priori* considerations but in relation to the actual conditions of the people. They thought that franchise might vary from province to province, and even from one part of a province to another. They warned against any sudden expansion of the franchise which might lead to a breakdown of the machinery through sheer weight of numbers. They also examined the question of communal representation, and, after having declared it to be anti-democratic, and opposed to the teaching of history, they

regretted that the system of separate representation had to be retained for the Muslims in provinces where they were in a minority. They also extended its operation to the Sikhs, but denied it to Europeans, Anglo-Indians, etc., on the ground that, any 'general extension of the communal system would only encourage still further demands and would be ..... fatal to that representation upon the national basis on which alone a system of responsible government can possibly be rooted.' They recommended that the representation of minorities could be easily secured by means of nomination. The Franchise Committee, however, recommended the extension of the system of separate communal representation to Indian Christians, Europeans and Anglo-Indians. Seats were reserved for the Non-Brahmins in Madras and the Maharathas in Bombay in plural member constituencies. It may be mentioned that the Franchise Committee enfranchised only about one-tenth of the adult population of the country and did not extend the right to vote to women. The provincial Legislative Councils were empowered to legislate for giving the right to women. This right was made use of and women were soon enfranchised, though not more than one per cent of the adult female population were given the right to vote anywhere. It is not necessary to describe the composition of the Legislative Council of every province. All of them were constituted on the same pattern. Each contained members belonging to three distinct categories : (i) elected non-officials who constituted not less than 70 % of its total strength ; (ii) nominated officials who could not be more than 20 % ; and (iii) a few nominated non-officials to give representation to certain classes and interests which could not be expected to secure representation by direct election on account of their small numbers, backwardness or unorganised condition. The elected seats were divided into General or Non-Mohammedan, Mohammedan, Sikh, Anglo-Indian, Indian Christian, and European seats. The U. P. Legislative Council consisted of 125 members arranged into different categories as noted below : Executive Councillors and other nominated officials: 17; nominated non-officials: 6; elected Non-Mohammedan members: 60; elected Mohammedans: 29; elected European: 1; elected Landlords: 6; University Representative: 1; Commerce and Industry: 3. The last three constituencies were special constituencies. It would be noted that no seats were reserved for the Sikhs, Anglo-Indians, and the Indian Christians in the U. P.

Their numerical strength did not warrant reservation of seats for them. Sikhs were given separate representation only in the Punjab where they formed a strong and powerful minority; the Indian Christians in Madras, and the Anglo-Indians in Madras and Bengal were also given separate representation.

It is not necessary to describe the electoral qualifications laid down by the Franchise Committee and accepted by the Government. No question of principle is involved. We would pass on to an account of the powers and functions of the Provincial Legislative Councils, and their tenure, etc.

The Legislative Councils were constituted for a three year term; they could, however, be dissolved by the Governor before the expiry of the full term. The Governor could also extend the life of a Council in special circumstances for not more than one year. The Governor ceased to be a member of the Council, but had the right to address it. The President of the Council was appointed by the Governor for the first four years; thereafter, he was elected by the Council from amongst its own members, subject to the approval of the Governor. A Governor-appointed President was deemed necessary for setting up high standards of decorum and efficiency in the conduct of business.

The Provincial Legislative Council had the power to make laws for the peace and good government of the province on subjects included in the provincial list. Bills on certain subjects could not be introduced without the previous consent of the Governor General. Bills passed by it required the assent of the Governor before they could be placed on the statute book. The Governor could refuse his assent to a bill and return it for reconsideration by the provincial Council. Bills passed by the Legislative Council and assented to by the Governor required the assent of the Governor General which could be withheld. In other words, the Governor General was given some control over provincial legislation.

The Provincial Legislative Councils were given greater control over provincial administration through the power of putting interpellations, asking supplementary questions, moving motions of adjournment, passing resolutions, and the power of voting supplies. But they could exercise control only over the administration of the transferred subjects and not over that of the reserved subjects. It should always

be remembered that for the administration of the reserved subjects the Governor acting with his executive councillors was responsible to the Governor General and through him to the Secretary of State. This division of responsibility and the consequent limitation upon the control of the Legislative Councils over the provincial administration were evident from many provisions relating to their financial and legislative powers. It may be repeated that if a Council failed to pass a bill relating to a reserved subject in the form in which it was recommended by the Governor, the Governor could *certify* that the passage of the bill in the form recommended by him was essential for the discharge of his responsibility for the administration of the reserved subject, and upon such certification it would become law. The Governor had no such power of certification in relation to bills pertaining to transferred subjects. A bill *certified* by the Governor had to be communicated to the Governor General and to the Secretary of State who was to lay it before both the Houses of Parliament for at least eight days before it could be presented to the King for his assent. In other words, the ultimate authority in regard to reserved subjects was the British Parliament, and not the Provincial Legislative Council. The Governor had the power to stop discussion on any bill or clause of a bill or amendment thereto, if he thought that such discussion had an adverse effect on the peace and tranquillity of the province.

As has been pointed out earlier, the provincial budget was separated from the Central budget, and separate heads of revenue assigned to the provinces and to the centre. The main heads of provincial revenue were receipts accruing from provincial subjects, the proceeds from taxes imposed by the provincial Legislative Council, and a share in the income-tax collected within the province. It was the duty of the Governor to get an estimate of the income and expenditure for the following year prepared and submitted before the legislature. The items of expenditure were divided into votable and non-votable. Contributions to the Central Government, interest on loans and sinking fund charges, expenditure the amount of which was prescribed by law, salaries and pensions of persons appointed by or with the approval of the Crown or by the Secretary of State for India, and the salaries of the judges of the High Court and the Advocate General were charges upon the provincial revenues: i. e.,

they were not subject to the vote of the Legislative Council. All other items of expenditure came up before the Legislative Council in the form of demands for grants and could be accepted, reduced or refused by it. It could not increase any demand or transfer it to some other head. If the Council refused or reduced a grant relating to a reserved subject, the Governor could restore the rejected or reduced grant, if he thought that the demand was essential for the discharge of his responsibility for the administration of the reserved subject. He had no similar power of restoring a grant refused or reduced by the legislature if it related to a transferred subject. In case of emergency, however, he had the power to authorise expenditure on any department, reserved or transferred, if he deemed it necessary for the peace and tranquillity of the province or any part thereof.

From the preceding account it would be evident that the provincial Legislative Council was given control over the administration of the transferred subjects; all it could do was to influence the administration of the reserved subjects. Resolutions passed by it were binding in case they related to the transferred subjects, but were mere recommendations if they pertained to the reserved half. We shall take up the question of the working of Dyarchy in a subsequent section of this chapter. Meanwhile a few words about the changes introduced by the Act of 1919 in what was known as Home Administration of Indian Affairs may be added.

**Control of the Governor General in Council and of the Secretary of State over Provincial Governments.**— The Act of 1919 did not relax the control exercised by the Governor General in Council and by the Secretary of State over provincial government except in regard to the transferred subjects. Every provincial government was required to obey the orders of the Governor General in Council and to keep him constantly and diligently informed of its proceedings, on all matters. In regard to the administration of the transferred subjects the Governor General in Council could exercise his powers of superintendence, direction and control only to safeguard the administration of central subjects and in deciding questions between two provinces when the latter failed to arrive at an agreement on some disputed point. The Secretary of State could exercise control with a view to safeguarding imperial interests.

## IV. 'HOME' ADMINISTRATION

**Introductory.**— In a previous chapter we have shown how the British Parliament began to exercise control over the affairs of the East India Company in India and its officials in England through the Board of Control. When the Crown assumed direct responsibility for the administration of India in 1858 and the East India Company was abolished, a new post was created in England, that of the Secretary of State for India. To him were transferred all the powers and functions previously exercised by the Court of Directors and the Board of Control. A body called the India Council was set up to assist and advise the Secretary of State for India. The Secretary of State-in-Council thus constituted the controlling authority in England, and came to be known as the Home Government of India.

**Secretary of State.**— The Secretary of State for India was invariably a member of the British Cabinet, and as the immediate agent of the British Parliament was responsible to it for the administration of Indian affairs. It was through him that the British Parliament maintained control over the Government of India, and kept itself informed of the way in which the affairs of this big country were managed. As has been stated above he inherited all the powers previously exercised in relation to the Government of India by the Court of Directors and the Board of Control. The Act of 1919 left his powers over the Government of India theoretically unchanged and unimpaired. It vested in him the power 'to superintend, direct and control all acts, operations and concerns which related to the Government or revenues of this country. The Governor General and through him the Provincial Governors were required to pay due obedience to his orders. All legislative projects of the Central and Provincial Governments needed his approval. All variations in taxation, all measures affecting revenues, customs, currency and exchange, and all proposals involving fresh expenditure and change of policy had to be laid before him. No payments out of Indian revenues in the shape of salaries, etc., could be paid without his sanction. The 'Home Charges' amounting to about one-fifth of the total expenditure of the Government of India were under his control. The recruitment of the Public Services and the management of the Departments of the Government of India in England were also

under his control. It was on his advice that the Crown made appointments in India, excepting that of the Governor General. It is true that in the exercise of his various functions he had to carry a majority of the India Council with him; nevertheless, his powers over the Government of India were vast; nothing of importance could be done by the latter against his wishes.

**India Council.**— Indian opinion had been opposed to the retention of the India Council; the Congress League scheme proposed its abolition. The authors of the Montford Report rejected this suggestion; they argued that for some time 'it will be absolutely necessary that the Secretary of State should be advised by persons of Indian experience'. They were convinced 'that, if no such Council existed, the Secretary of State would have to form an informal one if not a formal one.' It was therefore decided to continue the body 'which has all the advantages behind it of tradition and authority.'

The constitution of the Council was however modified in several respects. It was to consist of not less than eight and not more than twelve members. Previously the minimum was ten and the maximum fourteen. Half of its members were to be persons who must have served for at least ten years in India under the Crown. In order to have continuous flow of fresh experience the term of office was reduced from seven to five years. The salary of its members was fixed at £ 1200 a year and an additional allowance of £ 600 was given to those who were domiciled in India at the time of their appointment. The number of Indians on it was increased from two to three. The Council was to hold its meetings once a month.

The Act of 1919 made some other important changes also. The most important of them related to the salary of the Secretary of State. Till its passing it was paid out of Indian revenues. The system was bad; it prevented British Parliament from criticising the administration of the Secretary of State at the time of annual appropriations. The Act provided that it should be paid out of monies provided by Parliament. He was thus brought under the control of Parliament to a greater extent than before. The Act also provided that the salaries of his Under-Secretary and other expenses of his department may also be paid out of monies provided by Parliament.

But since the Government of India Act of 1919 provided for

the partial transfer of political power to the people in the provincial sphere and made the popular half of the provincial executive responsible to the provincial legislature, and since such responsibility was incompatible with the control of the Secretary of State and responsibility to the British Parliament, the Act empowered the Secretary of State to make rules to restrict the exercise of his power to superintend, direct and control to the extent it may be necessary in order to give effect to the purposes of the Act, *i. e.*, mainly in regard to the administration of the transferred subjects.

The rules thus made by the Secretary of State restricted his control over the transferred subjects for the following purposes only :

- (a) To safeguard the administration of central subjects.
- (b) To decide questions between provinces which they had failed to settle.
- (c) To safeguard imperial interests.
- (d) To safeguard the due exercise and performance of certain powers and duties imposed upon the Governor General-in-Council by the Act.
- (e) To safeguard the exercise of his own powers regarding the High Commissioner, the Services, and borrowing.

In regard to the administration of the reserved subjects in the provinces and the central subjects there could be no question of similar relaxation of the control of the Secretary of State. But the presence of large elected majorities in the central and provincial legislatures was incompatible with the rigid control till then exercised by the Secretary of State over the Government of India and the provincial governments. It was therefore found desirable to give the Government of India and the Governors-in-Council greater discretion than before. With this end in view and in accordance with the observations of the authors of the Report that certain matters which were till then referred to the 'Home Government' for sanction might in future be referred merely for the information of the Secretary of State, the Secretary of State delegated some of his powers to the Governor General-in-Council. 'Thus, whereas before 1919 all projects of legislation before introduction into the Central or a Provincial legislature had to be referred to the Secretary of State for

approval, now only certain classes of bills were so referred before introduction into the Central Legislature..... while provincial bills were not so referred at all except in such rare cases as those in which the Governor General might decide to refuse statutory previous sanction to any of them.\* Similar relaxation of control was made in the financial sphere. Nevertheless, the Government of India complained that the control exercised by the Secretary of State-in-Council over the Central and Provincial Governments in certain financial matters and in matters pertaining to Public Services was very great.

Reference must be made to another mode in which the control of the Secretary of State-in-Council over the Government of India was relaxed. This was known as the method of Convention. It was suggested by the Joint Select Committee, and the suggestion was adopted, that in fiscal matters the Secretary of State should not interfere if there was agreement between the Government of India and the Central Legislature. It was, however, not of much value.

Similarly, it was accepted as a convention that the Government of India should not interfere in purely provincial affairs if there was agreement between the Provincial Government and the Legislative Council.

**High Commissioner for India.**— Finally we may refer to another important change made in the 'Home Administration' by the Act of 1919. It provided for the appointment of a High Commissioner for India who was to perform what are known as 'agency functions', as distinguished from the political functions analogous to those performed by High Commissioners of the Dominions. These agency functions were thitherto performed by the Secretary of State. In the performance of these functions the Indian High Commissioner was to take instructions directly from the Government of India. His appointment, powers and duties were to be determined by His Majesty by an Order-in-Council. This provision had some constitutional significance : it indicated that India was becoming self-dependent to some degree.

#### V. THE SERVICES

It would not be out of place to add a few words about the

provisions contained in Part IV of the Act of 1919 for the protection of the rights of the Civil Services in India. It provided that no person in the Civil Service was to be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council was given the power to reinstate any person in that service from which he had been dismissed.

It was apprehended that there might be some friction between the popular ministers and the Civil Servants working under them in the *transferred* departments. It was made the duty of the Governor to get over the difficulty by suitable readjustments of persons and places. All orders of any importance prejudicially affecting the position and prospects of officers appointed by the Secretary of State, whether serving in the reserved or in the transferred departments, were to be made with the personal concurrence of the Governor.

"If there were some members of the Services who found it difficult to reconcile themselves to the changes introduced by the Montford Reforms, they were given the option to retire on such pension as the Secretary of State in Council may consider suitable.

## CHAPTER X

### THE REFORMS OF 1919 IN OPERATION

**Introductory.**— After having explained the main provisions of the Government of India Act of 1919 so far as they related to the structure, powers and functions of the Central Government, Provincial Governments, the Home Administration of Indian Affairs, and the Public Services, and determined the extent of and the manner in which it sought to introduce responsible government in our country, we would now describe its actual working. Since the establishment of Dyarchy in the provincial sphere was the most fundamental and also the most novel feature of the Act, we shall first determine whether the experiment was a success or a failure.

**Political Conditions on the eve of the Reforms.**— A few preliminary observations may be made. There can be no denying the fact that the Act of 1919 was a very great advance upon the existing system; for the first time in the history of British India it declared that it was the aim of British policy in India to prepare the country for responsible government, and took the first step in the direction. It must also be admitted that democracy is a plant of slow growth; it presupposes qualities among the people which cannot be cultivated all at once. It demands of those who work it a perception of and loyalty to the common interests which would enable the decision of the majority to be peaceably accepted. The majorities must practise toleration and goodwill and the minorities must show patience, and all must exhibit the sense of the sanctity of the rights of other persons. The authors of the Montford Report recommended Dyarchy as they thought that conditions in India were not ripe for the introduction of full-fledged responsible government. They wanted to give the people of India training in the art of self-government.

If the Reforms of 1919 had been conceded to India about ten years earlier in place of the Morley-Minto Reforms they would have evoked great enthusiasm among the people; they would have been gratefully accepted and earnestly worked. But what would have been certain in 1909 or even in 1913 became impossible in 1920.

The intervening years of the War made all the difference. War intensified the spirit of nationalism in India. In view of the creation of several new national states in Europe, the assumption of an equal status with Great Britain by the Dominions, and the new spirit of independence in several Asiatic countries, it became very hard for Indian patriots to accept gradual development of self-government, and harder still 'to accept the claim of a foreign Parliament to decide whether and where and to what extent Indians had shown themselves fit for self-government.\* In short, because of the rising tempo of Indian Nationalism as a direct consequence of the World War the Reforms of 1919 failed to satisfy Indians. They were viewed as a half-way house, and as such did not create popular enthusiasm.

We have already referred to the radically different views held by the Moderates and the Extremists in regard to the Montford Reforms, and to the secession of the Moderates from the Indian National Congress. As a consequence of their secession the political colour of the Congress changed completely ; its leadership passed into the hands of Extremists. It was thus a foregone conclusion that it would reject the Government of India Act of 1919. At the Amritsar session of the Congress which was held in 1919 after the harrowing tragedy of Jallianwala bagh and the horrors of the martial law regime in the Punjab, Deshbandhu Chitranjan Das moved a resolution rejecting the Reforms as unsatisfactory and disappointing. Mahatma Gandhi, who had returned from his successful campaign of passive resistance in South Africa and had conducted his experiments in Satyagraha on five different occasions in India after his return, moved an amendment to the effect that the Congress would work them with a view to the early establishment of full Responsible Government in the country. It also thanked Mr. Montagu for his labours in connection with the Reforms. The Congress accepted the substance of Mahatmajee's amendment with some changes.

But events in the country were moving fast. The failure of the Government to redress the Punjab wrongs and solve the Khilafat issue to the satisfaction of the Muslims turned Mahatma Gandhi from a cooperator into a non-cooperator. At the special session of the Congress held at Calcutta in September, 1920, the resolution moved by Mahatma Gandhi asking the nation to adopt a policy of

\* Coupland : *India : A Restatement*, page 117.

progressive non-violent non-cooperation (which was to begin with the renunciation of titles bestowed by the Government and the triple boycott of the reformed legislatures, law courts and the educational institutions, and end in non-payment of taxes) was carried by 1855 votes out of a total of 2,728. It was confirmed at the regular annual session held at Nagpur in December, 1920. The reasons which led Mahatmajee to advocate the policy of non-cooperation with the Government including the boycott of the legislatures would be stated in the next chapter. Here only this much may be stated that the movement of non-violent non-cooperation which swept over the country from end to end produced an atmosphere distinctly un-favourable for the success of the Government of India Act of 1919. In place of goodwill and friendliness which would have made the Reforms a success there was bitterness, estrangement and distrust which foredoomed its failure. The elections to the legislatures were boycotted by the Congress, and all those who entered them and the few persons who accepted office as ministers found themselves in none too enviable an atmosphere. Feelings ran very high and those who tried to work the Reforms in opposition to the popular sentiment came in for much opprobrium and must have felt stifled. The conditions under which the Reforms were introduced were thus most unfavourable. They became much worse after a couple of years when Mr. Montagu, who had tried his best to see that the Government of India worked them in the proper spirit, was made to leave the Cabinet, and in his place a reactionary conservative was appointed as Secretary of State for India. The Tories who dominated the British Government resolved upon a firm policy in India, and instructions were issued that the Reforms were to be worked in such a way as to give to India not the maximum of self-government but its minimum. The spirit of Montagu was thus completely reversed. The Liberal Ministers felt the change and some of them resigned their offices. The first to feel the effect of the changed spirit and resign his office in April, 1922, as a protest against the policy of 'firmness' adopted by the Government of India was Sir Tej Bahadur Sapru who was the right-hand man of Lord Reading during the first year of his Viceroyalty, though he said that he could not remain Law Member on 'grounds of health.' Mr. C. Y. Chintamani and Pandit Jagat Narayan Mulla, Ministers in U. P., resigned in May 1923. They found that the conditions became unbearable after the depar-

ture of Mr. Montagu from the India office. The warning given by Deshbandhu Das to Mr. Montagu that the Reforms 'could not work, that the I. C. S. would have it in their power to prevent it working and meant to do it' turned out to be true. So long as Mr. Montagu was there, the Reforms were worked in a proper way ; in the words of Mr. Chintamani, one had to 'make an effort to realise that one was under Dyarchy—the two halves of the Government were working so harmoniously.' But, as stated above, after his resignation the spirit of the Reforms was denied completely. Instructions were issued from London that henceforth 'the Reforms were to be worked with a view of not how much, but how little, self-government for India they could be made to yield.'\* The Government of India started the process of paying no heed to, and even defying, the wishes of the Assembly. Some instances to illustrate the point may be given.

(i) In September, 1922, the Government of India wanted to introduce the Indian States (Protection against Disaffection) Bill. The Assembly refused permission to introduce it. The Viceroy, Lord Reading, certified it as necessary and urgent, and it became law. There was no necessity for it, much less any urgency. But the Government were keen upon placating the Princes in whose territories the Prince of Wales was received with great enthusiasm and honour, and so were bent upon placing the Bill on the statute book. They therefore did not care for the wishes of the Assembly.

(ii) In 1923 Sir Basil Blackett, the Finance Member of the Government of India, proposed the doubling of the salt tax as a revenue-raising measure. The Assembly objected to the proposal, because it hit the poorest classes very hard, and suggested alternative ways of raising the revenue. Inspite of the rejection of the proposal by the Assembly the Governor General certified it as necessary and urgent. There was, of course, no emergency about the measure.

(iii) The whole of India demanded with one voice the release of Mahatma Gandhi who was operated upon for appendicitis while undergoing his six-year term. The Viceroy made no reference to it in his opening address to the Legislature in 1924. The Assembly was to debate a private motion for his release on the 5th of February. The Governor General, in order to avoid creating the impression that he did anything out of deference to the wishes of the Assembly,

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\* Zacharias : *Renaissant India*. page 217.

released him that very morning.

The way in which the Government of Lord Reading administered the affairs of the country brought into very clear relief the vast powers which the irresponsible executive enjoyed in comparison to which everything else seemed insignificant. As if the changed attitude of the Government was not sufficient to nullify the Montford Reforms, Destiny sent the Swarajists to the legislatures as a result of the general elections held under the Act in 1923. Their avowed object was to offer 'uniform, continuous and consistent opposition' to the Government. Between the decision of the Government to work the Reforms in such a way as to make them yield the minimum of self-government to Indians and the policy of uniform and persistent obstruction of the Swarajists the fate of the Reforms was sealed.\*

**Internal Defects of Dyarchy.**— (a) It would however be wrong to conclude that the Montford Reforms failed wholly because of the external circumstances; they had some inherent defects also on account of which it was no easy matter to work them successfully. The experiment worked only so long as dyarchy was ignored in practice; the moment it was decided to run the government as dyarchy, it failed. It failed because it gave rise to friction.† The

\* The following extract from Zacharias would be read with interest in this connection: 'The Montford Reforms were thus subjected to a two-fold spirit of irresponsibility by the Government no less than by the Swarajists: both treating them contemptuously and as a mere make-belief.' (Page 242)

† The authors of the Reforms were themselves fully aware of the defects inherent in them. In the following passage they not only laid bare these defects but also prescribed the spirit in which alone the scheme could be worked successfully:—

'Hybrid executives, limited responsibility, assemblies partly elected and partly nominated, division of functions, reservations general or particular, are devices that can have no permanent abiding place. They bear on their faces their transitional character; and they can be worked only if it is clearly recognised that that is their justification and purpose. They cannot be so devised as to be logical. They must be charged with potentialities of friction. Hope of avoiding mischief lies in facing the fact that they are temporary expedients for training purposes, and in providing that the goal is not merely kept in sight but made attainable, not only by agitation but by the operation of machinery inherent in the scheme itself.'

more important of the defects inherent in the scheme are noted below.

Dyarchy was not only a novel but also a clumsy experiment in constitution-making. Its opponents considered it unsound in theory and unworkable in practice; even its friends and supporters had nothing better to say in its defence than that it was better than any other alternative open to them. Its clumsiness and theoretical unsoundness lay in its attempt to introduce responsibility in one part of Government and leave the other irresponsible. One of the Provincial Governors rightly characterised dyarchy as a 'cumbersome, complex, confused system, having no logical basis and rooted in compromise.' According to Lord Lytton the reserved half of the government was disliked but respected, whereas the transferred half was not only disliked but also despised.

Dyarchy is unsound in theory because it proceeds on the assumption that it is possible to divide the various departments of government into two groups and entrust the administration of each group to two different agencies responsible to two different authorities. This assumption runs counter to the basic fact that government is an organic whole and cannot be normally divided into compartments administered in different ways. It has nothing to support it in the experience of civilised people or the history of mankind.

Indians disliked the system because it was based on distrust in their capacity to manage their own affairs. Matters like law and order and land revenue which touch the lives of the people intimately were not handed over to responsible ministers. Furthermore, undue restrictions were placed upon the transfer of power to the ministers in the transferred subjects which were much resented by the ministers and the people. Of course, the British statesmen looked at the question from a different angle, and introduced partial responsibility because of their belief that the Indians were not mature for full responsible government and needed training in the art. But it is the general resentment of the people and their leaders which determined the fate of the experiment and not the views of the British statesmen.

(b) It should also be pointed out that for its successful working dyarchy postulated qualities in the Provincial Governor which were

not easily found. It placed very large powers in his hands and the success or failure of the scheme to a large extent depended upon the way he exercised them, particularly on the manner in which he tried to settle the conflicts which were bound to arise between the two halves of government. It was his task to secure harmony and cooperation and maintain equipoise between them. This demanded not only sympathy for the aspirations of the people but also tact, patience, reasonableness and impartiality on the part of the Governor. Unfortunately, most of the provincial Governors did not work the scheme in the spirit in which it was intended to be worked by its authors. This contributed a good deal to its failure.

(c) In the preceding paragraphs we have tried to show that dyarchy is wrong in principle. It means the division of an organic whole into two irreconcilable halves, one popular and elective in origin, and the other official and non-elective. This inherent defect of the system was aggravated by the way in which the provincial subjects were divided into transferred and reserved. The division was made in such a way that the Ministers in charge of the transferred subjects 'were never in control of the whole of any single department'.\* This point was stressed with great force by Sir V. K. Reddi, the first Minister for Industries in the Madras Government in the course of his evidence before the Muddiman Committee. He said : 'I was a Minister for development without the forests. I was a Minister of Agriculture minus irrigation. As Minister of Agriculture, I had nothing to do with the administration of the Madras Agriculturists Loans Act or the Madras Land Improvement Loans Act. The efficacy and efficiency of a Minister of Agriculture without having anything to do with irrigation, agricultural loans, land improvement loans, famine relief, may better be imagined than described. Then again, I was Minister for Industries without factories, boliers, electricity and water power, mines or labour, all of which are reserved subjects.' Similarly, the Minister for Education had nothing to do with European and Anglo-Indian Education, and with Chiefs' Colleges and institutions run by Government for the benefit of the armed forces or members or children of members of other public services. The division of functions was thus made in such a way as to leave little freedom to the ministers in administering their

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\* Kerala Putra : *The Working of Dyarchy in India*, page 45.

departments ; the transferred departments were put in a position of dependence on the reserved departments. This was a serious drawback of the scheme of dyarchy and contributed not a little to its failure.

(d) We have seen that the authors of the Report on Indian Constitutional Reforms did not contemplate that the Governor should occupy the position of a purely constitutional head bound to accept the decisions of his ministers, and reserved to him a power of control over them and expected him to refuse assent to their proposals, if he thought that assent to them would have serious consequences. But they hoped and intended that he would meet their wishes to the farthest extent and promote their policy whenever possible. The Governors did not generally act in accordance with the spirit of the Report after the exit of Mr. Montagu. After the Reforms had been in operation for two years—during these first two years the country was in the grip of the movement of non-violent non-co-operation started by the Congress under the leadership of Mahatma Gandhi for the redress of the Punjab wrongs and the Khilafat question, and the Government was in need of all the help the Moderates could give them in suppressing it—the Governors usually forgot the intention of the Reforms and began to interfere more and more with the work of the Ministers. Mr. Kelkar of the Central Provinces complained that the Governor, while allowing him to have his way in matters of policy, over-ruled him constantly in matters of detail. Mr. Chintamani in the U. P. complained that the power was with the Governor and not with the minister. The Governor over-ruled him even in the matter of nominating a person to a Library Committee. There were three methods by which the Governors concentrated large powers in their hands. (i) They were empowered by the Act to frame Rules and Orders for the more convenient transaction of business. They framed them in such a manner as to concentrate power in their own hands. For example, one of the rules required the Secretary to the Government in every Department to meet the Governor once a week and discuss with him all the important matters, arising in his department. The Secretary was also required to submit to the Governor all the cases in which he differed from the minister for final decision by the Governor. These rules reduced the authority of the ministers a good deal and

strengthened the position of the Governor. (ii) Instead of consulting their ministers jointly, they began to deal with them individually which made it easier for them to over-rule either of them in case of difference of opinion. (iii) Some Governors advanced the novel theory that the ministers were merely their advisers, and that it was open to them to accept or not to accept the advice given by them. The position to which the ministers were reduced is well brought out in the following statement of Mr. Chintamani. He said : "I have passed through every stage from a habitual 'Honourable Minister is responsible and his view shall prevail' and 'I must support the Honourable Minister' to being over-ruled in matters of varying degrees of importance and unimportance down to a library committee."

(e) The Governors were charged by the Instrument of Instructions to protect the members of the Public Services in the enjoyment of their recognised rights and privileges. This was interpreted by the Governors to mean that all matters relating to the Services, including those of transfers, postings and promotions, even in the Ministers' departments were under their control. Prior to 1922, appointments to various provincial posts used to be made by the Governor with the concurrence of his colleagues in the Executive Council. The members of the Council recorded their views and the majority opinion prevailed. At a later stage the Governor adopted the practice of making the appointments himself and merely informing the members of the fact. The net result of all these developments was that the provincial Governors became very powerful. The control of the Secretary of State over them was relaxed, but there was no corresponding increase in their responsibility to the provincial legislatures. It can thus be said that dyarchy which was designed to introduce responsibility resulted in the increase of irresponsible power of the Governors.

(f) It would be recalled that the authors of the Report on Indian Constitutional Reforms had recommended joint deliberation between the two halves of the provincial government. The Governor was charged by the Instrument of Instructions to encourage the habit of joint deliberation between himself, his Councillors and Ministers 'in order that the knowledge of your official advisers may be at the disposal of your Ministers, and that the knowledge of your

Ministers as to the wishes of the people may be at the disposal of your Councillors.' This advice was, however, ignored by many a Governor. Except in Madras, joint consultations, if held at all, were informal. The executive councillors were, of course, always ready to make use of the ministers' influence with their followers in the Legislative Council, but were not willing to take them into confidence and consult them in important matters. The ministers thus had little opportunity to influence the administration of the reserved half, but were expected to support the measures of the executive councillors on the floor of the legislature. If they did so, the public accused them of forsaking their principles after taking office and of being subservient to the bureaucracy; if they opposed them, the result was increased friction between them and the other half of the Government. The plight of the ministers was thus sad indeed.

(g) Another defect of dyarchy which contributed to its failure to a large extent lay in the fact that the ministers were not in a position to exercise due control over the services in the departments under their control. It has been pointed out already that the Governor interpreted his right to safeguard the legitimate rights and privileges of the public servants to mean his right to control their transfers, postings, promotions, etc. The result was that the ministers had no power to choose their subordinates when vacancies arose. It is on record that the Minister-in-charge of the Medical Department in Madras wanted to appoint a particular person as the Surgeon General, but he was over-ruled, and an I. M. S. officer from North India was brought over to fill the vacancy. The Ministers could not always enforce obedience to their orders on the part of persons like district officers serving under the reserved departments. In this connection it may be pointed out that the Secretaries to the Government in the various departments had the right of direct access to the Governor and receive instructions from him over the head of the ministers. This made the position of the ministers weak, and was inconsistent with the spirit of responsible government.

(h) The ministers found themselves greatly handicapped in the execution of their policies by financial stringency. Not only were the finances of the provinces left in a weak position by the contributions they were required to make to the Government of India under the Merton Award, but the provincial Finance Department

everywhere adopted a step-motherly attitude towards the transferred subjects. As was pointed out by Mr. Chintamani in his evidence before the Muddiman Committee, the Finance Department was naturally more anxious to see that the reserved departments got all the money they required before other departments could obtain what they wanted. On one excuse or another the Finance Department refused to sanction money for the schemes framed by the ministers. To quote Mr. Chintamani, 'I am prepared to state this without any exaggeration that it was a very general experience of both the ministers in the United Provinces that they had to contend with great difficulties when they went to the Finance Department, that pretty frequently they had to go before the Governor, pretty frequently the Governor did not side with them and pretty frequently they could gain their point in the end by placing their offices at the disposal of the Governor.' Perhaps, conditions would not have been so bad if separate sources of revenue were made available to the transferred departments. But this suggestion did not find favour either with the authors of the Report or with the Joint Select Committee.

(i) But perhaps the factor which contributed most to the failure of dyarchy was that, on account of the peculiar composition of the legislative councils, there could be no *real* ministerial responsibility whose introduction was the most vital feature of the Reforms of 1919. Ministerial responsibility means that the ministers should hold office at the will of the popular representatives in the legislature and that the latter should have ample opportunities to review the work of the ministers and be able to give their approval or disapproval to it. Under the conditions prevailing in the provinces these conditions were not realised. Ministerial responsibility was more a myth than a reality.

The provincial legislative councils were not wholly elected bodies: each of them contained a sufficiently large and solid bloc of official and nominated non-official members who constituted about 30% of the total strength. Some of the elected members represented special interests and usually voted with the Government. Thus, if a minister could secure the support of about a score of elected members, he could be kept in office by the Governor with the help of the official and nominated members whether or not he had the backing of a majority of the elected members. Responsibility to the

legislature technically meant responsibility to the whole of the Legislative Council and not to the elected members of it. Partly because of the absence of well-organised political parties and partly because of separate representation given to certain classes and interests, it was not easy for any ministry to function without the support of the official bloc. The tactics employed by the Swarajists drove the ministers more and more into the arms of the reserved half. Dyarchy thus did not work in the way it was expected to work; instead of being popular, ministers came to be viewed as parts of the irresponsible bureaucracy. An example may be cited to illustrate the point. In July 1927, the Opposition in the Madras Legislative Council moved a resolution of no-confidence in the ministers. A majority of elected members voted for the resolution, but it was defeated with the help of the official and nominated non-official members. The fortunes of the responsible half thus depended on the support of the irresponsible half. An analysis of the division lists in provincial legislative councils would constitute an interesting study from this point of view. A study of the figures would reveal the fact that between the years 1921 and 1928 there were 104 divisions out of which the government lost only 21. But if the votes of the official bloc are not taken into account, the total number of Government defeats would be 49. This means that though the ministers did not obtain the confidence of a majority of elected members on 49 different occasions, they remained in office. They did not think that the confidence of a majority of elected members was necessary for continuation.\*

Because of the rules of procedure adopted by the Legislative Council and to a certain extent because of the fact that for the first four years their Presidents were appointed by the Governors, the members did not have all those opportunities of exercising control over the work and policies of the ministers which they have in countries like Great Britain. In one case the President refused to allow a motion of no-confidence in the ministers. The Committee system also was not well developed in the provincial legislatures.

(j) One other weakness of dyarchy which was not inherent in it but was due to external factors may be mentioned. The ministers did not always belong to the same group; they did not always

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\* Refer to Appadorai : *Dyarchy in Practice*, page 357.

follow a common and identical policy. In some cases they belonged to rival groups and not only did their followers fight against each other in the Legislative Councils but they themselves did not hesitate to criticise each other's proposals. There could not develop any spirit of joint ministerial responsibility under such conditions, and the Governor dealt with each minister separately and without reference to his colleague.

The following passage sums up in a beautiful way the reasons which led to the failure of dyarchy : 'Thus, from every point of view, Responsible Government even of a partial character, which was the purpose and object of the Reforms, has failed altogether to materialise. The size and permanence of the official bloc, the special interests which are bound to support the Executive at all time seriously restrict the value of a majority in the Legislature as an expression of popular confidence. Responsibility to a majority consisting mainly of the official bloc is not responsibility to popular representatives but to official nominees. This was not and could not have been the purpose of the Act. As it is, with the leadership of the House in the Executive Councillor and the Ministers themselves moulding their policy in order to secure the good will of the official bloc, and the Councils unable to enforce their nominal authority, the Ministers have become subordinate administrators, taking their orders from the Governor and depending for their existence on the good graces of their colleagues. It is clear, in this particular matter, which was the essential part of the Reforms of 1919, that the Act was worked by the executive in a spirit which travestied its intentions. This is but another instance, of which many can be found in British Indian history, of the local authorities taking away what the Parliament had given.'\*

Such were the factors which led to the failure of dyarchy. It was a failure in the sense that the objective for the sake of which it was introduced was not realised ; there was no real transfer of power to the people, no genuine responsible government even in the limited sphere of transferred subjects. The absence of stable political parties, the presence in the legislatures of a large bloc of officials and nominated non-officials, and of persons returned from communal and special constituencies, the joint purse, the powers of the Governor

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\* Kerala Putra : *The Working of Dyarchy in India*, page 57.

to over-ride the advice given by the ministers, the rights of the services, the right of the Secretaries to have direct access to the Governor : all these factors combined together to prevent the growth of responsible government in the provinces.

**Achievements of Dyarchy.**— It must, however, be pointed out that in some of the provinces like the U. P. and Madras, for the first two years, at least, the ministers were prepared to act on the principle of joint responsibility and also to resign if they lost the confidence of a majority of elected members or when they were over-ruled by the Governor. Surendra Nath Bannerji who was the Minister for Local Self-Government in Bengal says in his autobiography that dyarchy did not fail in Bengal. 'Both Lord Ronaldshay and Lord Lytton were statesmanlike in their attitude of sympathy and help, and stood by the Ministers with their generous support. They acted as constitutional sovereigns and made no distinction between Members and Ministers.\* This shows that the system was worked in different ways in different provinces ; it was slightly more successful in some provinces than in others ; thanks to the cooperation between Mr. Montagu and the Indian Liberals it worked more successfully during the first two years than during the last fourteen years of its existence.

It should also be remembered that though the provincial legislative councils could not always enforce popular responsibility on the ministers, they made fairly good use of their powers in other directions. By their power over the purse, however restricted in scope and however limited, by the power of certification possessed and sometimes used by the Governor, by their power of moving resolutions on important policies of the State and raising discussions on them, moving motions of adjournment to call attention to problems of an urgent public nature and asking questions, they exerted some influence on the executive. They also passed some important legislation of a progressive and liberalising character. On assuming office the ministers turned their attention to the much-needed reform of local bodies, and in several provinces Acts were placed on the statute book which resulted in the reorganisation and democratisation of the municipal and district boards. Education was also attended to. In some provinces social legislation of a far-

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\* *A Nation in the Making*, page 384.

reaching nature was passed ; e. g., the Hindu Religious Endowments Act of Madras and the Children's Act of Bengal. It was no small gain that the new system brought many Indians into touch with problems of administration and with the difficulties of self-government. It was a good training we got under dyarchy.

Similar observations may be made about the work of the reformed Central Legislature. Though the executive was not at all made responsible to it, it was given large powers of influencing it. And it used them to good purpose. The first Assembly generally cooperated with the Government in working the Reforms, and achieved substantial results. 'It has been critical of the attitude of the Government : it has on occasions used its powers for purposes of political demonstration. But no impartial critic who studies its debates and estimates its work, can fail to come to the conclusion that it has used its powers for the benefit of the people with reasonable regard to the difficulties of the Government and the anomalous position of a non-sovereign Executive. Its legislative work has been far-reaching and comprehensive ; its influence in matters of administration has not been directed either towards a weakening of the Central Government or exercised without consideration of the supreme necessity of maintaining law and order. Its enthusiasm for social reform has been praiseworthy and it has been assiduous in its demand for Indianisation of the services and for a share in the national defence. It has effected considerable retrenchment in administration and has continuously impressed on the Government the necessity of economy.\* But this happy state did not continue after the entry of the Swarajists in the second Assembly. They adopted the policy of persistent obstruction.

\* Kerala Putra : op. cit., page 108-109. For details, see C. L. Ananad : *The Government of India*, Chapter XII.

## CHAPTER XI

### THE NATIONAL MOVEMENT : 1919-1935

**Introductory.**— In Chapter III we traced the origin and growth of the National Movement and its influence on constitutional development. In the last chapter we referred to the political conditions in the country under which the Montagu-Chelmsford Reforms were introduced. Since the Congress boycott of the first general elections held in 1920, and the return of the Swarajist party in sufficient strength in the second general elections held in 1923 exercised a profound influence on the working of the Reforms of 1919, and in as much as it was the pressure of political events in the twenties and the early thirties that led to the enactment of the Government of India Act, 1935, we must explain the circumstances under which the Indian National Congress was led to boycott the Montford Reforms and start the non-violent non-cooperation movement in 1920, and at a later date to permit the Swarajists to contest the elections. We shall carry our narration upto the end of the third session of the R. T. C. Since the inspiration and urge for the non-violent non-cooperation movement came from Gandhiji whose entry into the political and national life of the country was the most important event of those days, a few words about him would not be out of place here.

**The Entry of Mahatma Gandhi.**— The name and fame of Mahatma Gandhi as the hero of passive resistance against the Government of South Africa for the repeal or withdrawal of the Anti-Asiatic legislation of Transvaal in regard to the Registration and Immigration of Indians in that part of South Africa had preceded his return to India in 1914. In the course of that struggle he had come into contact with Gopal Krishna Gokhale who had extended his sympathy and active support to him in many ways. Highly impressed by the character and personality of Gopal Krishna Gokhale, Mahatma Gandhi had already decided to make him his political guru even before returning to India. On arrival back home he desired to become a member of the Servants of India Society founded and run by Gokhale. Gokhale himself was keen on

having Gandhiji as a member; he even wished him to be his successor as the President of his Society. But the members of the Society were not agreeable to the idea; they saw that there was a great and fundamental difference between the ideals and methods of work of Gandhiji and their own. Before any decision could be taken, Gokhale died; and Gandhiji withdrew his application for membership of the Society. This episode has been referred to here to emphasise the point that in his political ideas and temperament Mahatma Gandhi was a moderate like Gokhale; he believed and prided in the citizenship of the British Empire, and offered his services to the Government of India as a recruiting agent and for ambulance corps. He was awarded a medal for his services in the War.

**Mahatmaji : a Co-operator.**— The moderate attitude of Gandhiji and his desire to cooperate with the Government are evident from the following extract from his paper, *Young India*. In the issue of December 31, 1919, he wrote as under: 'The Reforms Act coupled with the proclamation is an earnest of the intention of the British people to do justice to India and it ought to remove suspicion on that score... Our duty is not to subject the Reforms to carping criticism but to settle down quietly to work so as to make them a success.' It may be added that it was chiefly on account of Mahatma Gandhi that the Amritsar Congress decided to work the Montagu-Chelmsford Reforms. The story of the way in which the Congress passed the resolution advising the people to work the Reforms, inadequate and disappointing though they were, need not be told here. It is sufficient to note that leaders like Deshbandhu C. R. Das, Bipin Chandra Pal and others stood for their outright rejection. Gandhiji was also able to achieve his objective by securing the addition of the following paragraph to the original resolution as moved by Deshbandhu Dass: 'Pending such introduction, this Congress trusts that, so far as may be possible, the people will so work the Reforms as to secure an early establishment of full responsible government, and this Congress offers its thanks to the Rt. Hon. E. S. Montague for his labours in connection with the Reforms.'

**Mahatmaji turns a Non-cooperator.**— But events passed so swiftly and dramatically during the succeeding nine months that the situation was completely reversed. At the special session of the

Congress held at Calcutta in September, 1920, Mahatmaji advocated non-cooperation with the Government and urged the boycott of the Legislatures to be set up under the Montford Reforms, while Deshbandhu Das, B. C. Pal and others who stood for rejecting the Reforms at Amritsar now opposed Mahatmaji. That a sober and moderate-minded person like Mahatmaji who believed in the good intentions of the British Government and the British people towards India should have been driven to regard the Government of British India as satanic and lead the country into the path of non-cooperation with it is an exceedingly sad commentary on the ways and methods of the Government of British India. The subsequent history of the national movement in India cannot be fully understood without some knowledge of the causes which converted Gandhiji from a cooperator into a non-cooperator, and ultimately led him to lead the Quit India movement in 1942.

The causes of this conversion are best set forth in the remarkable statement made by Mahatmaji before Mr. Broomfield, who tried him in March 1922 for having preached sedition through his writings in his weekly, *Young India*. Therein he explained why he was forced to turn against the government after having cooperated with it all his life. He said : 'The first shock came in the shape of Rowlatt Act, a law designed to rob the people of all freedom. I felt called upon to lead an intensive agitation against it. Then followed the Punjab horrors beginning with the massacre at Jallianwala Bagh (in Amritsar) and culminating in crawling orders, public floggings and other indescribable humiliations. I discovered, too, that the plighted word of the Prime Minister to the Mussalmans of India regarding the integrity of Turkey and the holy places of Islam was not likely to be fulfilled. But inspite of the foreboding and the grave warning of friends, at the Amritsar Congress in 1919. I fought for cooperation and working the Montagu-Chelmsford Reforms, hoping that the Prime Minister would redeem his promise to the Indian Mussalmans, that the Punjab wound would be healed and the Reforms, inadequate and unsatisfactory though they were, marked a new era of hope in the life of India. But all that hope was shattered. The Khilafat promise was not to be redeemed. The Punjab crime was whitewashed and most culprits were not only unpunished but remained in service and some continued to draw pensions from the Indian

revenue, and in some cases were even rewarded. I saw, too, that not only did the Reforms not mark a change of heart, but they were only a method of further draining India of her wealth and of prolonging her servitude.'

A few words about the Rowlatt Act, the Punjab wrong and the Prime Minister's pledge to the Indian Mussalmans to which reference has been made in the above-quoted passage, seem to be called for by way of explanation. They are subjoined.

**Rowlatt Act and After.**— It would be recalled that during the first decade of the present century the terrorist movement had come into existence in the country, largely as a result of the highly oppressive and repressive measures adopted by the Government in dealing with the movement against the Partition of Bengal. This movement reached its peak during the early years of the World War. The Government of India passed a special legislative measure, known as the Defence of India Act, for dealing with it. This Act was made for the duration of the War. The Government of India wanted to arm itself with special powers for dealing with revolutionary crimes after the Defence of India Act ceased to operate. It appointed a committee presided over by Mr. Justice Rowlatt to go into the matter and submit its report. It submitted its report in April, 1918. It came to the conclusion that the ordinary criminal law was not adequate to cope with revolutionary crimes, and recommended two kinds of special legislation to meet the situation at the end of the War. The Government of India got two bills prepared to give effect to the recommendations of the Rowlatt Committee. They came to be known as Rowlatt Bills or Black Bills. There was universal protest in the country against their introduction. Inspite of deep popular agitation, inspite of the warning given by Mahatmajee that in case the black legislation was not withdrawn, he would be forced to resort to stayagrah, and in the teeth of united opposition of the Indian members of the Central Legislature, one of the two bills became law under the name of The Anarchical and Revolutionary Crimes Act of 1919.

Somehow the idea struck Mahatma Gandhi that the best way of launching his Satyagrah against the passage of the Black or Rowlatt Bill would be to organise a country-wide *hartal*. Originally the 30th of March, 1919, was fixed for the suspension of all business

and for fasting and prayer, but later on the date was shifted to the 6th of April. Information regarding the change of date did not reach some places, and the people of Delhi observed it on the 30th of March. There was clash between the people, who wanted the Railway Refreshment Stall to observe hartal, and the police in the course of which the latter resorted to firing resulting in the loss of about eight lives. Mahatmaji was informed of the incident and asked to proceed to Delhi. He promised to come after the hartal on the 6th. While on his way to Delhi, he was arrested at Palwal on the morning of the 8th of April, and sent back to Bombay under police escort. News of his arrest spread like wild fire and led to disturbances in several places, notably in Delhi, Ahmedabad, and in the Punjab which had the misfortune of being governed by Sir Michael O'Dwyer. The hartals on the 30th of March and the 6th of April had passed off peacefully at Amritsar, but the city and the province were set ablaze by the arrest and deportation of Drs. Satyapal and Kitchlew two prominent leaders of Amritsar. The people took out a procession and demanded the release of their popular leaders. They were stopped on the way and fired upon twice. This let loose an orgy of violence on the part of the mob who took vengeance upon any European who came their way. Troops were rushed into the city and the mob melted away by the evening. This took place on the 10th of April. On the 11th also there was a procession in protest and hartal ; but public meetings were banned on the 12th. The notice banning meetings was not properly circulated, and in ignorance of it a public meeting was announced for the 12th in the Jallianwalla Bagh in the heart of the city. People were allowed to assemble there, and after they had gathered there in thousands, General Dyer marched there with armoured cars and troops and without giving any warning to the people to disperse ordered his soldiers to fire upon the gathering which was unarmed and absolutely peaceful. The casualties were heavy, and would have been heavier still if General Dyer could take his machinegun with him. His purpose was to strike terror into the hearts of the people. This deliberate and unprovoked massacre would remain a dark spot upon British administration for all time to come. It was the beginning of the tragedy which converted Mahatma Gandhi into a non-cooperator.

It is not necessary to go into the details of the happenings at Amritsar, Lahore, Kasur and other places in the Punjab, and the horrors perpetrated by the Government of the province under Sir Michael O'Dwyer during the martial law. Two committees were appointed to inquire into these incidents and report on them, one by the Indian National Congress, and the other by the Government of India. The Congress Inquiry Committee published unimpeachable evidence of the most brutal excesses committed by the servants of the Government. The report of the Government Committee, known as the Hunter Committee, did not go so far, but even its findings were highly damaging. The Indian public expected that, in view of the Royal Proclamation and the inauguration of the Montford Reforms, the Government would punish the wrong-doers and grant adequate compensation to all those who had suffered during the Martial Law regime. But nothing of this kind took place. Nay, even before the Hunter Committee began its work, the Government had passed an indemnity bill shielding all officials guilty of excesses in dealing with the disturbances. The Hunter Committee Report (majority) sought to whitewash the guilt of General Dyer and took the view that his conduct was based upon 'an honest but mistaken conception of duty', and that he 'exceeded the reasonable requirements of the case due to a grave error of judgment'. The Government of India merely removed him from service, and took no action against Sir Michael O'Dwyer. The British Parliament, too, failed to rise equal to the occasion and apply balm to the aching Indian heart. Worse still, some of the speeches delivered in the House of Lords on the motion of Lord Finlay condoning General Dyer's conduct shocked people in this country. The fact that the Anglo-Indian Press greeted General Dyer as the saviour of British rule, and that subscriptions were raised for him worsened the situation still more. These things showed that Great Britain was absolutely unrepentant for the great wrong done to the Punjab. This produced a great revulsion of feeling all over the country and had a decisive effect on Mahatma Gandhi who concluded that a government that could condone such terrible wrongs must be evil in nature. He therefore decided to dissociate himself from it in all possible ways. He would not abet evil, and therefore became a non-cooperator. There can be no doubt that if the Government of India had taken action against Sir Michael

O'Dwyer, General Dyer, and other persons connected with the Punjab atrocities, Mahatma Gandhi, a confirmed cooperator that he was, would not have been forced into the path of non-cooperation, and the whole subsequent history of India would have been different. We can therefore say with Surendranath Bannerjea that the Rowlatt Act was the parent of Non-Cooperation.

**Khilafat.**— The second issue which tended in the same direction and contributed to the change in his attitude towards the Government of India was the Khilafat question. During the Great War the Indian Mohammedans became uneasy at the policy the British Government might adopt in regard to Turkey when the time for the discussion of peace terms came. The British Prime Minister assuaged their feelings by declaring in the course of a speech that Great Britain would not pursue a vindictive policy and would not deprive Turkey of the rich and renowned lands of Asia Minor and Thrace. At the end of the War, however, it became clear that the British Government did not mean to keep the pledge and that Turkey would be completely dismembered. A deputation was sent to England in March 1920 to plead the cause of Turkey, but it failed to achieve any thing despite the best efforts of Mr. Montagu. As a result of the armistice terms, Turkey was dismembered; Thrace was presented to Greece and both Great Britain and France divided the Asiatic portions of the Turkish Empire among themselves in the guise of mandates. The Sultan became a virtual prisoner in the hands of the Allied High Commission. This greatly agitated the Indian Muslims because it deprived the Sultan of Turkey who was the head of the Islamic Church, i. e., Khalifa of all the Faithful, of a part of his temporal power. They therefore started the Khilafat movement with the object of restoring to their Khalifa or Head of the Islamic Church the temporal power which he enjoyed as the Sultan of Turkey before the Great War. They demanded that Asia Minor and Thrace should be restored to Turkey and the suzerainty of the Sultan over the holy places recognised. Since there was no possibility of their taking up arms against the victorious British Government, they accepted the advice of Mahatma Gandhi and decided to non-cooperate with the British Government. The non-violent non-cooperation movement was thus started with the dual object of redressing the Punjab and Khilafat wrongs, Its objec-

tive was later broadened by the inclusion of Swaraj. The Muslims headed by Maulana Mohammad Ali and Maulana Shaukat Ali sided with Mahatma Gandhi, and the country witnessed a great but temporary wave of Hindu-Muslim Unity.

**Congress accepts Non-Cooperation.**—Mahatma Gandhi placed his scheme of withdrawing all support to the Government, until the wrong done to the Punjab was redressed and the question of Khilafat solved to the satisfaction of the Indian Muslims, at the special session of the Congress held at Calcutta in September, 1920, under the presidency of Lala Lajpat Rai. This session was attended by a very large number of Muslim delegates. The resolution on non-cooperation was moved by Mahatmaji himself. He was supported by the Ali Brothers and Pandit Motilal Nehru. The opposition was led by C. R. Dass, Pandit Madan Mohan Malaviya and Mrs. Annie Besant. Lokamanya Tilak, who died shortly before the special session, liked the programme but had his doubts about the capacity of his countrymen to stand the suffering it involved. He would have supported it enthusiastically as it succeeded in winning popular support. The resolution was carried by a large majority ; 1855 voted for it and 873 against. The resolution is too long to be reproduced here in full ; we would content ourselves with giving its summary.

After describing how the British Government failed to rectify the Punjab wrong and to do their duty towards the Indian Musalmans in the matter of Turkey, the resolution said that there could be no contentment in India without redress of the two wrongs, and that the only effectual means to vindicate national honour and to prevent a repetition of similar wrongs in future was the establishment of Swaraj. The method it recommended for the redress of the wrongs and the establishment of Swaraj was the adoption of progressive non-cooperation with its programme of fivefold boycott. Surrender of titles, withdrawal of children from schools and colleges, the gradual boycott of British courts by lawyers and litigants, and the boycott of the elections to the reformed legislatures in the country and boycott of foreign goods were the main items of the programme of non-cooperation.

The Congress advised people to adopt the cult of Swadeshi and to prepare cloth by reviving hand-spinning and hand-weaving. It was also decided to start national schools and colleges in various parts of

the country for imparting education to the people. This resolution came up for discussion at the regular session of the Congress held at Nagpur in December where it was adopted almost unanimously.

Besides ratifying the Calcutta resolution on Non-Cooperation the Nagpur session made two vital changes in the Congress Constitution and effected a thorough overhauling of its organisation. Till then the goal of the Congress had been self-government within the British Empire. This was not approved of by those Congressmen who objected to remaining within the Empire and wanted severance of the British connection. To accommodate them the goal was declared to be Swaraj. It was left to each individual to interpret Swaraj in his own way. Mahatmaji interpreted it to mean Swaraj within the Empire if possible, and outside if necessary. A change was also made as regards the methods by which Swaraj was to be achieved. The Congress was not to be limited in the future to constitutional means only as it was in the past; it could adopt *all peaceful and legitimate means*. This change was effected to enable Congress to resort to non-payment of taxes, etc., which could not be regarded as *constitutional*. The change in the goal and the method was a compromise between the right-wingers like Pandit Malaviya and Mr. Jinnah and the left-wingers who wanted complete independence to be achieved by all possible means. The Nagpur session was thus a triumph for Mahatamaji. It may be mentioned that it was attended by two Labour M. P.'s, Col. Wedgwood and Mr. Ben Spoor. We need not refer to the reorganisation of the machinery of the Congress effected at Nagpur.

**The Non-Cooperation Movement.**— After the resolution on Non-Cooperation had been passed at the special session held at Calcutta, Mahatmaji undertook a tour of the whole country with a view to whipping up the enthusiasm of the people, popularising his scheme of the boycott of titles, educational institutions, law courts and legislatures, and putting the Congress organisation in good order. He set the ball rolling by returning his own medals to the Governor General. He asked the lawyers to give up their practice in the law courts and the people not to take their cases to the latter. The students were asked to leave the educational institutions and participate in the struggle or to join the national institutions which were coming into existence. The movement was a greater success than

was expected. Hundreds of persons renounced their titles and honours, and many times more the number gave up their practice at the law courts. Among those who renounced their professional work to devote their whole time to the country were C. R. Dass in Bengal; Moti Lal Nehru and his son Jawahar Lal Nehru in the U. P.; Lajpat Rai in the Punjab; Vithalbhai and Vallabhbhai Patel in Gujurat; N. C. Kelkar in Poona; Dr. Moonje and Abhayanker in C. P.; Rajendra Prasad in Bihar; and Rajagopalachari, Satyamurti and Prakasham in the Madras Presidency. Maulanas Mohammad Ali and Shaukat Ali, Dr. Ansari, and Maulana Abul Kalam Azad were among the prominent Muslim leaders who plunged into the struggle. Mr. Jinnah, Mrs. Besant and Mr. B. C. Pal left the Congress because they radically disagreed with the policy and programme of non-cooperation. The Liberals had already left the Congress; there could be no question of their joining the movement.

The boycott of the reformed legislatures was a great success. No Congressman offered himself as a candidate for election and the number of voters who went to the polls to vote for one candidate or the other was very small. Thousands of students left their schools and colleges. For their benefit several national educational institutions came into existence, the chief of which were the following: The Bihar Vidyapeth, the Kashi Vidyapeth, the Bengal National University, the Tilak Vidyapeth, and the National Muslim University at Aligarh. Swadeshi got great impetus, and handspinning was revived. Khaddar became the national wear. Mahatmaji appealed to the country for the Tilak Swaraj Fund and got a crore and a few lakhs of rupees in a short time. The movement was thus progressing satisfactorily. In July Mahatmaji added a new item to the programme; namely, the boycott of foreign cloth. It was launched with bon-fires of foreign cloth in almost every town and city of the country. In November, 1921, the Prince of Wales visited India, and the Congress decided to boycott his visit. A serious riot broke out in Bombay on the occasion of his landing in the city. Wherever the Prince went, he was greeted with *hartals* which the police wanted to break with lathis. All the important leaders with the exception of Mahatma Gandhi were arrested by the Government and sent behind prison bars.

The Prince of Wales was due to arrive at Calcutta on December

24, 1922. Lord Reading, who had succeeded Lord Chelmsford as the Governor General, reached there a week earlier. As the situation in the country was getting out of hand from the official point of view and the Government did not want to use ruthless force to suppress it on account of the presence of the Prince of Wales, Lord Reading was anxious for a settlement with the Congress. The events taking place outside India which made the Moslem world unite against Great Britain also influenced the Government in the same direction. Pandit Madan Mohan Malaviya acted as the intermediary between Lord Reading and Shri C. R. Das who was in jail. But the negotiations fell through on the question of the release of the Ali Brothers who were sentenced to two years' imprisonment in connection with a speech at Karachi which had no connection with the Non-Cooperation movement. Mahatmaji would not accept any settlement which did not include their release, and the Governor General did not want to release them. Deshbandhu Das got much annoyed and angry at the loss of this opportunity of arriving at a settlement. Lord Reading had agreed to call a Round Table Conference of the representatives of the Government of India and the Congress to settle the future constitution of India.

**The Suspension of Non-Cooperation.**— Mahatma Gandhi was thinking of organising a no-tax campaign in Bardoli taluka in Gujarat as the final stage in his movement. He wrote a letter to Lord Reading on February 1, 1922, that he would start his no-tax campaign unless Government gave proof of a change of heart within seven days. But before the period of seven days expired, there was a serious case of mob violence at Chauri Chaura in U. P. where a mob led by Congressmen burnt a police station and killed a number of policemen on February 4. There had been acts of violence previous to the Chauri Chaura incident also; namely, in Malabar where the Moplahs had committed brutalities on Hindus, and at Bombay when the Prince of Wales landed there. Mahatmaji saw that the movement was losing its non-violent character; and horrified at the spectacle of growing violence on the part of the people, he called a meeting of the Working Committee and decided to suspend the movement including the defiance of government laws and non-payment of taxes, much to the disappointment and chagrin of the rank and file of the Congress. He asked the country to take

to the constructive programme which included the promotion of hand-spinning and weaving, removal of untouchability, promotion of communal amity and temperance. Lord Reading saw his opportunity and arrested Mahatma Gandhi at a time when there was depression in the country and there was no danger of his arrest being followed by country-wide disorder and unrest as happened in 1919. He was sentenced to six years imprisonment by Mr. Broomfield in March, 1922.

**Appraisal of the Movement.**— The first non-cooperation movement thus failed in its objective. Mahatmaji had promised his countrymen Swaraj in one year. The year was over ; in place of Swaraj there was a sense of frustration in the country, and the leader of the movement was in jail. Nevertheless, the movement was not altogether barren of results. It raised the pitch of political agitation to a height never dreamt of before ; it made the Congress a mass movement and conveyed the message of Swaraj to the humbler strata of society. It shook the foundations of the British rule in the country. It was productive of some good in another way also. So long as the movement was active in the country, the bureaucracy was anxious to secure the goodwill and cooperation of the Moderates. It worked the Montford Reforms in the proper spirit. With the suspension of the movement and the resignation of Mr. Montagu in England it changed its attitude and the spirit of working the Reforms. We may sum up the achievements of 1921 in the following words of Shri Subhas Chandra Bose : 'The year 1921 undoubtedly gave the country a highly organised party-organisation. Before that the Congress was a constitutional party and mainly a talking body. The Mahatma not only gave it a new constitution and a nation-wide basis— but what is more important converted it into a revolutionary organisation ..... Uniform slogans were repeated everywhere and a uniform policy and ideology gained currency from one end of India to the other. The English language lost its importance and the Congress adopted Hindi as the *lingua franca* for the whole country... Khadi became the official uniform for all Congressmen.'\*

**The Birth of the Swaraj Party.**— As has been pointed out above, the decision of Mahatma Gandhi to suspend all defiance of government laws and ordinances and concentrate attention and

\* *The Indian Struggle*, pages 103-04.

energy upon the constructive programme caused a good deal of resentment among the leaders and the rank and file of the Congress. The dissatisfaction against this decision found expression in the formation of the Swaraj Party under the joint leadership of C. R. Das and Motilal Nehru. The idea was conceived by C. R. Das and discussed by him with his colleagues in the Alipur Central Jail. He wanted a change in tactics for rousing public enthusiasm once again. He advocated entry into the legislative councils with the intention of offering obstruction from within. The boycott of legislatures as conceived by the Calcutta Congress had proved a failure in the sense that, though Congressmen had kept away from them, others had entered, and they were functioning. Instead of helping the Congressmen in their non-cooperation movement, the Liberals who had been returned to them had lent support to the Government in its efforts to suppress it. A vantage point had thus been lost in the struggle for freedom. He therefore recommended that the ban on Councils be lifted and Congressmen allowed to contest the elections and prevent undesirables from going there and doing mischief. Participation in the elections which were due in 1923 would provide Congress an opportunity to carry on its propaganda all over the country.

On release from jail Deshbandhu Das carried on vigorous propaganda in favour of his programme of council entry. He made it clear that the new policy did not mean any abandonment or suspension of the other activities of the Congress; 'it simply meant an extension of those activities to include the capture of elected seats in the legislatures and all public bodies.\* The idea was opposed by the orthodox followers of Gandhiji who were headed by C. Rajagopalachari, and came to be known as 'No-changers'. The question was discussed at the Gaya session of the Congress in 1922 and defeated inspite of the fact that Deshbandhu Das was the President of the session. Pundit Motilal Nehru thereupon announced that they would form a new party to be known as the Swaraj Party. Das and Nehru toiled hard, and after vigorous propaganda the first Swarajist Conference was held at Allahabad in March, 1923. The constitution of the Swaraj Party and its plan of work were drawn up. On account of the growing bitterness between the 'No-changers and the Swarajists in some provinces it was decided and

\* Subhash Chandra Bose : *The Indian Struggle*, page 114.

to hold a special session of the Congress at Delhi in September, 1923. A compromise was arrived at there according to which Congressmen were permitted to take part in the elections to the legislatures which were about to be held and carry on a 'uniform, continuous and constant opposition' to the Government from within them. The Congress as a body was to have no responsibility in the matter. This meant a triumph of the Swarajists ; they asked for nothing more than the lifting of the ban on council entry which the compromise resolution conceded. They won their point after nine months of hard labour in the teeth of opposition from the No-changers. As the general elections were quite near, they had to put in arduous work to win them. Under the able leadership of Deshbandhu Das and Pundit Motilal Nehru they achieved remarkable success at the polls. They secured an almost absolute majority in the C. P. and Bengal. In other provinces they constituted the single largest party but never commanded sufficient votes to offer 'uniform, continuous and consistent' opposition. By their tactics they made it impossible for the ministers to function in the C. P. and Bengal but achieved little success elsewhere. In the Central Legislative Assembly they secured 45 of the elected seats, and with the help of the Independent members could sometimes inflict defeat on the Government. But in view of the special powers of veto and certification possessed by the Governor General they could not create any deadlock or otherwise obstruct the work of the Government. They did succeed in throwing out the budget several times, but on each occasion it was certified by the Governor General. Sometimes they staged a walk out and left the Assembly, but returned again. In short, except in the C. P. and Bengal, where Dyarchy had to be suspended, the tactics of the Swarajists achieved little success.

Reference must, however, be made to one important resolution which was moved by Pundit Motilal Nehru on February 8, 1924, and passed by the Assembly with the combined votes of the Swarajists and the Independents against the opposition of the Government. It ran as follows : 'This Assembly recommends to the Governor General-in-Council to take steps to have the Government of India Act revised with a view to the establishment of full responsible government for India, and for the said purpose : (a) to summon at an early date representatives to a Round Table Conference to recommend, with

due regard for the protection of the rights and interests of the important minorities, a constitution for India ; and (b) after dissolving the Central Legislature, to place the said scheme before a newly elected Indian Legislature, and submit the same to the British Parliament to be embodied in a statute.' Replying to the motion on behalf of the Government of India, Sir Malcolm Hailey promised an investigation into the difficulties inherent in or arising from the working of dyarchy and to suggest ways and means to remedy them consistently with the structure, purpose and policy of the Government of India Act of 1919. This reply was disappointing, and, by way of protest, the Assembly threw out some of the demands for grants and even refused leave to introduce the Finance Bill. The refused grants were restored, and the Finance Bill was certified by the Governor General. After the Assembly was over, the Government of India appointed a Reforms Enquiry Committee presided over by its Home Member, Sir Alexander Muddiman. The Swarajists boycotted it, but men like Mr. Jinnah and Sir Tej Bahadur Sapru served on it as members. It is not necessary to make further reference to the tactics employed by the Swarajists in the pursuit of their policy of offering 'uniform, continuous and consistent opposition' to the Government.

Doubts were expressed in several quarters about the soundness and practicability of the Swarajist policy of obstruction from within the legislatures. Congressmen like Shri Bipin Chandra Pal and Independents like Mr. Joseph Baptista were convinced of the futility of purely obstructionist tactics. The Liberals were, of course, opposed to the idea ; Surendranath Bannerjea described it as futile and meaningless. There is no doubt that there was hardly any room for purely obstructionist tactics to achieve any solid results in the Centre or in the administration of the reserved subjects in the Provinces. The Swarajists did succeed in making dyarchy unworkable in two provinces, but this did not lead the country anywhere near to its goal of Swaraj. The characterisation of the Swarajist tactics as given by Dr. Zacharias seems to be sound. He says that they 'were in the position of people who wanted to keep their cake and eat it at the same time. They considered it necessary ..... to talk of extremism, and yet were resolved to essay parliamentarism. As a consequence the Swarajists were driven to a course of quibbl-

ing, as to when cooperation was non-cooperation.\*

However illogical and unpracticable the Swarajist policy of obstruction might have seemed to its opponents then, and however unsound and meaningless it may appear to us at the present, it served a very useful purpose at that time. Its authors never expected it to yield rich results or to take the country towards its goal ; they recommended it with a view to the creation of an atmosphere of resistance to the Government without which the Government could never be made to yield to popular demands. It was successful to a large extent in whipping up the enthusiasm of the people which had suffered a great set-back on account of the suspension of the non-cooperation movement. While the Congress concentrated attention on the constructive programme, the Swarajists looked after the political affairs of the country and thus rendered a great service to the nation. But partly as a result of the wearing off of the novelty of its programme, and partly on account of the most untimely death of its greater leader, Deshbandhu Das, in June, 1925, and the dissensions which developed within the party, it suffered a decline in prestige, and did not fare so well in the general elections of 1928 as in those of 1923. The Government of Bengal also contributed to its decline by arresting a large number of its influential members and detaining them in jail without trial. It should also be remembered that some of its members accepted office under the Government.

**The Release of Mahatma Gandhi.**— While the Swaraj Party was busy organising itself and gathering strength in the teeth of opposition from the orthodox followers of Mahatmaji, he himself was serving his six years' term in the Poona jail. He was taken ill and removed to the Sasoon Hospital at Poona where he was operated upon for appendicitis. The whole of India demanded his release; but so stiff was the attitude of Lord Reading that he made no reference to his illness or to the demand for his release in his opening address to the Central Legislature. However, he was released on February 5, 1924, the very day when the Assembly was to discuss a private motion for his release. It would have been more graceful on the part of the Government to have released him in response to the demand of the Assembly, but Lord Reading did not believe in

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\* Zacharias : *Renaescent India*, Page 240.

grace ; he wanted to return non-cooperation for the non-cooperation of the Swarajists.

Pandit Motilal Nehru saw Mahatmaji at Juhu where he was convalescing after his release and sought to secure his support for the Swarajist policy. He did not succeed in his mission, but an understanding was arrived at between Mahatmaji and the leader of the Swaraj Party according to which, while Mahatmaji was to devote himself to the cause of Khadi and communal harmony, the Swarajists were to take charge of the political activities of the nation. Each section was to work independently of the other. This satisfied the leaders of the Swaraj Party.

Mention may be made of the fact that Mustafa Kemal Pasha, who had successfully defeated the enemies of Turkey and become the President of the Turkish Republic, abolished the Khilafat altogether. This took the wind out of the sails of the Khilafat movement in India. The various Khilafat Committees went out of existence and a large number of Muslims who had taken active part in their work now drifted away from the Congress and were absorbed into reactionary organisations. The Muslim League which had been eclipsed by the Khilafat movement now came to life and became active. It meant the re-emergence of Muslim communalism which was in abeyance during the Non-cooperation movement.

There is not much to chronicle about the national movement during 1925, 1926 and 1927. Mahatmaji was busy with the constructive programme and made an effort to unite all parties on its basis, but the Liberals would have nothing to do with Khadi work. Mrs. Annie Besant sought Congress help for her Commonwealth of India Bill which she wanted to be introduced in Parliament as a private bill, but did not succeed in her mission. In 1925 the Government of India appointed the Skeen Commission to enquire into the possibilities of a rapid Indianisation of the Army in India. Pandit Motilal Nehru accepted a seat on this Commission inspite of the Swarajist policy of uniform obstruction. The Skeen Commission submitted a unanimous report which provided for the complete Indianisation of one half of the Indian Army within twenty-five years. Its recommendations were not given effect to by the Government on one ground or another ; it refused to find funds for the purpose. This made even the Liberals despair of attaining

Swaraj with the help and cooperation of the British people.

**The Simon Commission.**— The Swaraj Party was formed at a crucial juncture in the political history of our country. It rendered great service by keeping up the spirit of resistance to the authorities and whipping up the enthusiasm of the people. But after the novelty of its tactics had worn off and the Council Front had ended in something like a stalemate, there was a great political slump in the country. The death of Deshbandhu Das was followed by an all-round depression; there was no exciting programme before the nation. At this juncture the British Government committed a great blunder which provided a splendid opportunity to the politicians for a countrywide agitation. This was the appointment of the all-white Simon Commission.

In November, 1927, the Governor General, Lord Irwin, announced the appointment of the Indian Statutory Commission under Section 84 (a) of the Government of India Act. It provided for the review of the political situation in India every ten years. In the ordinary course the Statutory Commission should have been appointed in 1931, ten years after the inauguration of the Reforms in 1921. But the Tory Government of Great Britain did not like to leave its appointment to the successor government which was likely to be Labour, and wanted to dispose of the Indian question while it was in power. The Conservatives were afraid that the successor Labour Government might make further concessions to the Indian demand for Swaraj. There was nothing in the appointment of the Statutory Commission a few years before the proper date to annoy or agitate the Indians. What they resented most and what led to a country-wide agitation against it was its composition. Instead of appointing a mixed Commission on which Indians and Britishers should serve jointly under a British member of Parliament as Chairman, Lord Birkenhead, the Secretary of State for India, nominated a Commission of seven members drawn exclusively from the British race. Though it was a body which was to determine the shape and form of the future constitution of India, Indians were deliberately kept out of it. Lord Birkenhead had been previously informed that to appoint a purely British Commission on a subject which so vitally and intimately affected India was to invite trouble and disaster. But he paid no heed to such warnings, and rode roughshod over national

sentiment. He sought to justify the exclusion of Indians from the Commission on the ground that, because of the numerous and mutually hostile sections of opinion in the country, it was impossible for him to choose some Indians without offending others. He held the internal divisions among Indians as the reason for their exclusion.

This announcement evoked a chorus of condemnation not only from Congressmen but also from Liberals and other sections whose cooperation the British Government had almost taken for granted. That the Congress would boycott the Simon Commission—the Indian Statutory Commission was popularly known by this name because Sir John Simon was its Chairman—was taken for granted; this was the natural consequence of its insistence on the principle of self-determination which was negatived by its composition. But the British statesmen were not prepared for its boycott by the Indian Liberals; their decision to have nothing to do with the Simon Commission came to them as a great and unpleasant surprise. The Leader of Allahabad regarded the Statutory Commission as both an injury and an insult to India, as a calculated affront to Indian opinion, to Indian intelligence as well as to Indian self-respect. Sir Tej Bahadur Sapru regarded the exclusion of Indians as 'a deliberate insult to the people of India, as not only does it definitely assign to them a position of inferiority, but what is worse, it denies to them the right to participate in the determination of the constitution of their own country.' The result was that wherever the Commission went it was greeted with hartals, black flag demonstrations and cries of 'Simon, go back'. The Government tried to organise counter-demonstrations, but it did not succeed. It resorted to repression through the police. At several places the police tried to disperse the demonstrators by the free use of lathis and batons. At Lahore the police charged the peaceful demonstrators headed by Lala Lajpat Rai. A white police official aimed his lathi blow at his chest which inflicted a permanent injury upon his heart as a result of which the great patriot died a few weeks later. This was a great insult to Indian nationhood, and the revolutionaries tried to avenge it by the murder of a police official whom they mistook to be the person who gave the lathi blow to Lala Lajpat Rai. At Lucknow leaders like Pandit Jawahar Lal Nehru and Pandit Govind Ballabh Pant were treated in a similar way. It is not necessary to go into

details. What is important to bear in mind is the fact that all sections of Indian opinion were unanimous in their firm decision to have nothing to do with the Simon Commission. Only a few loyalists and communalists could be induced by the Government to appear before the Commission and give evidence. In several ways the arrival of the Commission was a godsend.

**The Simon Report.**— Inspite of the hostile reception given to it, the Commission did its work thoroughly. It visited India twice, and it took it more than two years to prepare its report which was published in May, 1930. Although the Report was very unsatisfactory and disappointing from the point of view of India, it must be admitted that it bore the mark of great industry. One can easily endorse the judgment of Coupland that it was by far 'the most complete study of the Indian problem that had yet been made', and that it 'added another work of first-rate value to the library of Political Science'. 'There is also throughout a courtesy of tone towards Indians generally that makes the Report a welcome change from the cold attitude towards the human side of life which Blue Books often represent. Immense pains have been taken to avoid the assumption of a dominating racial attitude.'\* Its great merit was that it emphasised and discussed all the main difficulties and problems of the Indian situation, including the question of defence and its bearing on British control, the racial and communal dissensions, and the position of Indian States in a future constitutional reconstruction. Its great demerit was that it failed to take note of the radical change that had been brought about by the non-violent non-cooperation movement, and of the aspirations of the people generated by it) (It dealt more 'with that old India) which I knew when I first went out nearly thirty years ago, before the national movement had started; it shows little understanding of the Young India which we see rising to-day on the tide of national upheaval.† (The Commission failed to see the new India that was rising because its members never came into contact with the people. The India they saw was the official India.)

After a careful and thorough survey of the conditions in India the Commission came to the conclusion that, partly on account

\* Andrews : *India and the Simon Commission*, page 39.

. † *Ibid*, page 40.

of the inherent weakness of dyarchy and partly because of communal antagonism, the experiment in self-government introduced by the Act of 1919 did not succeed. The intention of the authors of the Montford Reforms to establish, within a certain definite range, responsibility to an elected legislature had not been realised. Ministers came to depend more and more on the official bloc; they came to be regarded as 'government men'. It was also very difficult for the legislative councils to discharge two different functions at the same time: to exercise control over the policies of the ministers, and to criticise freely and vote for or withhold supplies from the executive councillors over whom they had no control whatsoever. The Commission could not go back and scratch the attempt to introduce parliamentary institutions; they recommended that the distinction between reserved and transferred subjects be abolished, and all the 'provincial subjects be entrusted to popular ministers. The Commission came to this conclusion all the more readily because they realised that to withhold responsibility for the maintenance of law and order from popular ministers was to negate responsible government.

While recommending the abolition of dyarchy and the handing over of all the provincial subjects to popular ministers, the Commission proposed a number of safeguards. Along with provincial autonomy they recommended the grant of special powers to the Governor which might enable him to override the advice of the popular ministers for specific purposes. They also proposed that the Governor might include one or more non-elected persons, ordinarily experienced officials, in his cabinet and that in some of the provinces the department of law and order might be placed in the charge of the official member of the cabinet. The official minister was, however, to be responsible to the legislative council and not to the Governor or Governor General. The Governor was to preside over the meetings of the cabinet. In the next place, the Commission came to the conclusion that the Governor General and the Governors must remain 'in possession of full and ample powers to ensure the existence of a thoroughly efficient administrative system, to safeguard the interests of minorities, and to carry on the administration in the event of breakdown of the constitution.\* Therefore, they recommended (i) that the Government of India should retain ample con-

\* Chuni Lal Anand : op. cit. page 307.

trol over the provincial governments, and (ii) that the Governor's powers to secure necessary legislation and finance through certification and restoration of reduced or refused grants should be extended to cover the whole sphere of executive action. The distinction between the votable and the non-votable items in the budget was also retained.

The Commission recommended the enlargement of provincial legislatures. The more important provinces were to have between 200 and 250 members. The official bloc was to disappear. The number of nominated non-officials was not to exceed ten per cent of the total strength. In the absence of fresh agreement communal electorates were to be retained. The Muslims were allowed to retain existing weightage in provinces where they were in a minority. With a view to making the provincial legislatures more representative of the people it was proposed that franchise should be lowered so as to give the right to vote to at least twenty per cent of the adult population. The Commission recommended the separation of Burma from British India, and declined to extend the principle of provincial autonomy to the N. W. F. Province.

The Commission next examined the popular demand for responsibility at the Centre and negatived it for several reasons. In the first place, it wanted to preserve the unity of administration. In the second place, it thought that any scheme of self-government for India should take into account not only British India but also the Native States. The time had not come when the States could be asked to join in an All India Union ; it was only in a distant future that the provinces of British India and the Indian States could be united in a common polity. Lastly, the question of defence was also important. There could be no question of introducing responsibility at the centre until the problem of defence could be satisfactorily solved. The Commission, however, recommended the establishment of the Council of Greater India, representing British India and the Indian States which could be consulted on all matters of common concern.

The Commission recommended the reconstitution of the central legislature on a federal basis. The Legislative Assembly was to represent the various provinces as units of the future Union, the States coming in at a later time when they decided to join the

Union. The Assembly was to be indirectly elected. The Council of State was to represent the federal principle and also to possess the senatorial character. The powers of the Governor General to secure necessary legislation by means of certification and issuing ordinances and his power of restoring reduced and refused grants were also to continue. The distinction between votable and not-votable items was to be retained.

In regard to the 'Home Administration', the Commission recommended the retention of the India Council to help and advise the Secretary of State but proposed a reduction of its strength. Recruitment for the Civil and Police Services was to continue as thitherto. No change was recommended in the rate of Indianisation of the Services fixed on the basis of the Lee Commission.

Such were the main recommendations of the Simon Commission. To say nothing of Dominion Status, it did not give even partial responsibility at the Centre. Provincial autonomy which it recommended was limited by the special powers of the Governor and subjection to the control of the Central Government. The Indian Army was to be put under the control of His Majesty's Government, though its cost was to be borne by the Indian tax-payer. India had demanded bread; she was offered stones instead. Little wonder then, that the Report excited little enthusiasm and was received with a chorus of condemnation. The observation of Sir Sivaswamy Aiyer that 'it should be placed on the scrap-heap' may be taken as the typical Indian attitude to it. It was cold-shouldered even by the Labour Government of Great Britain and received little attention at the hands of the first R. T. C. But it was revived by Sir Samuel Hoare as the Secretary of State for India under a predominantly Conservative Government, and many of its recommendations found their way into the Government of India Act of 1935.

**The Nehru Report.**—The appointment of the all-white Simon Commission had another and happy repercussion on Indian politics. In the course of his speech on the appointment of the Statutory Commission Lord Birkenhead, while trying to justify the exclusion of Indians from it, had challenged Indians to produce an agreed constitution and submit it to Parliament for consideration. He threw this challenge with the conviction that Indians could never agree among themselves. In the atmosphere created by the united

opposition to the unwanted Simon Commission Indians accepted the challenge and organised an All Parties Conference which held its first sitting in February, 1928, even while the Commission was touring the country. The All Parties Conference wisely appointed a sub-committee, presided over by Pundit Motilal Nehru, to draft a constitution. Sir Tej Bahadur Sapru, Sir Ali Imam, Mr. M. S. Aney, Sardar Mangal Singh, Mr. Shuaib Qureshi, Mr. G. R. Pradhan, and Shri Subhash Chandra Bose were its members. The Committee produced a memorable report which has gone down to history as the Nehru Report. Zacharias describes it as 'a masterly and statesman-like report.' It considered the main constitutional problems facing the country with great acumen and insight, and laid down the general principles on which they were to be decided. Its recommendations were unanimous except in regard to the basis of the constitution. While the majority favoured Dominion Status, a minority pressed for complete national independence. The Report adopted a compromise. It accepted Dominion Status not merely as a distant goal, but as 'the next immediate step'. It however gave liberty of action to all those groups and parties which made complete independence their goal. Although it envisaged a future linking up of the Indian States with the rest of India in a federal polity, the Nehru Report confined itself to British India. It however stated that the new responsible government of India should exercise the same rights and discharge the same obligations towards the Indian States till the formation of the Federation, as the then Government of British India did. For British India it recommended full responsible government on the lines of the self-governing Dominions. The executive power was vested in the King, but was to be exercised by the Governor General as his representative. The Governor General was to act on the advice of his popular ministers as the constitutional head of the State. The Cabinet was to be responsible to the legislature which was to be bicameral. The lower chamber of the central legislature consisting of 500 members was to be constituted on the basis of adult suffrage and direct election. Different provinces were to be represented on it on population basis. The upper chamber was to contain 200 members to be elected by provincial legislative councils by the method of proportional representation. The legislature was given the right to discuss and vote on the Army budget. The Indian Army was to be placed under the control of an Indian Minister responsible

to the legislature. The public services also were to come under the control of the central legislature. Similarly, full responsible government was recommended for the provinces. The Report also laid down a scheme of distribution of powers between the Centre and the Provinces, and left residuary powers in the hands of the former. In regard to the vexed question of communal representation the Report made several wise recommendations. It proposed joint electorates with reservation of seats for the minorities on population basis with the right to contest additional seats. No seats were to be reserved for any community in the Punjab and Bengal. The Report also enumerated nineteen fundamental rights which were to be embodied in the constitution. One of them was the equality of men and women so far as their rights were concerned. It also recommended the creation of new provinces on linguistic basis with a view to the 'balancing of Muslim-majority Provinces against Hindu-majority Provinces.' 'The Nehru Report deserves to be read and studied in all its details, as it sheds light on every subject it touches and displays a practical common sense, which never loses itself in doctrinaire utopias, but which equally spurns to shelter itself behind the enunciation of mere platitudes.\*

The Nehru Report was adopted unanimously by the All Parties Conference at Lucknow in August, 1928. But when it came up for ratification before the various bodies which were represented on the All Parties Conference, difficulties arose. Several bodies began to examine it from the point of view of narrow communalism. The Muslim League was divided on the issue. One section, composed of the Nationalist Muslims like Dr. Ansari, Hakim Ajmal Khan and Maulana Azad, favoured its adoption in its entirety ; another section led by Sir Mohammad Shafi was for its rejection and cooperation with the Simon Commission ; while the third led by Mr. Jinnah pressed for several vital amendments which destroyed its organic character. The Muslim Conference claimed on behalf of the Indian Muslims separate electorates, weightage, and due share in the central and provincial cabinets. It also demanded that residuary powers should be vested in the provinces. Even the Indian National Congress was not unanimous in its support ; the younger section led by Jawahar Lal Nehru and Subhash Chandra Bose would accept it only on the basis

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\* Zacharias : *ibid*, pages 251-52.

of complete national independence. The older group led by Pandit Motilal Nehru was for its acceptance in toto. Pandit Motilal Nehru, who presided, seemed to be fighting a losing battle at the Calcutta session on this question of Complete Independence *versus* Dominion Status. Mahatma Gandhi intervened and presented a compromise formula which accepted the Nehru Report in its entirety, provided effect was given to it by the British Parliament before the end of 1929. This marked the re-entry of Mahatma Gandhi into the active political life of the country and the probable revival of the non-violent non-cooperation movement which had been suspended in 1922.

**Lord Irwin's Proclamation.**— Alongside these developments in India there occurred in Great Britain an important event which had a profound effect on the development of the political situation in our country. This was the formation of a minority Labour Government with Mr. Ramsay Macdonald as the Prime Minister and Mr. Wedgwood Benn as the Secretary of State for India. Mr. Wedgwood Benn lost no time in calling Lord Irwin, the Governor General of India, to London to discuss Indian affairs and 'to represent to His Majesty's Government the different standpoints of those who can speak for Indian political opinion'. Lord Irwin remained in London from June to October. On his return to India he issued a proclamation on October 31 on behalf of His Majesty's Government. It may be regarded as the response of the British Government to the resolution passed by the Calcutta Congress giving one year's time to the Government within which to accept the Nehru Report. The Proclamation ended with the following words : 'I am authorised on behalf of His Majesty's Government to state clearly that in their judgment it is implicit in the declaration of 1917 that the natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion Status.' It also proposed to hold a Round Table Conference in London soon after the publication of the Simon Commission Report at which Indian delegates would sit with representatives of His Majesty's Government to discuss the Simon Report and other proposals put forward in connection with the Indian constitutional problem. The Conference was to be set up with the 'purpose of seeking the greatest possible measure of agreement for the final proposals which it would later be the duty of His Majesty's

Government to submit to Parliament.'

The Proclamation was very cautiously worded; it did not anywhere promise the immediate grant of Dominion Status to India. One thing, however, was crystal clear: this was the fact that both Mr. Wedgwood Benn and Lord Irwin approached the Indian problem 'with a genuine desire of justice, an obvious honesty of purpose and a natural sense of equality', to use the words of Dr. Zacharias.

Within twenty-four hours of the Viceroy's announcement the leading politicians of India assembled at Delhi. The gathering was mixed; it included members of the Congress Working Committee and non-Congress leaders like Sir Tej Bahadur Sapru. After close examination of the statement they issued a manifesto signed, among others, by Mahatma Gandhi, Pt. Motilal Nehru and Jawaharlal Nehru, Dr. Ansari, Pandit Malaviya, Sardar Patel, Dr. Moonje, Mrs. Annie Besant, Sir Tej Bahadur Sapru and the Rt. Hon. Srinivas Sastri. It expressed their appreciation of the sincerity underlying the declaration and of the desire of His Majesty's Government to placate Indian opinion, and also the hope that they would be able to tender their cooperation to His Majesty's Government in their efforts to evolve a scheme of Dominion Status for the country. The signatories also suggested certain steps including the release of political prisoners to ensure the success of the proposed Conference which they expected would meet, not to discuss when Dominion Status was to be established, but to frame a scheme of Dominion constitution for India. The statement concluded with the following words: 'We hold it absolutely essential that the public should be made to feel that a new era has commenced from to-day, and that the new constitution is to be but a register of the facts. Lastly, we deem it as an essential factor for the success of the Conference that it should be convened as expeditiously as possible'.

As has been shown above, the statement was influentially signed. The signatories included men like Mahatma Gandhi and the Nehrus, nationalist Muslims like Dr. Ansari, and liberals like Sir Tej Bahadur Sapru and the Rt. Hon. Srinivas Sastri. The only persons to oppose it were men like Subhas Chandra Bose and Srinivas Ayengar who belonged to the extreme left wing of the Congress and stood out for complete independence. Their opposition had little significance; it was purely doctrinal in nature.

**Complete Independence.**— Inspite of the changed outlook of the Labour Government in relation to India and its desire to help her, there was no response from the Government to the Indian leader's statement. Political prisoners were not released and no clarification of the issues raised in the statement was forthcoming. Some well-meaning friends urged Lord Irwin to make a gesture before the Lahore Congress so that the leaders may not go to the session empty-handed. A meeting between the Viceroy and Mahatma Gandhi and Pt. Motilal Nehru was arranged. Messrs. Jinnah, Sapru and Vithalbhai Patel were also present on the occasion. It took place on 23rd December, 1929, at Delhi. After talking about the unfortunate attempt to blow up the train in which the Viceroy was returning to Delhi for the meeting, Mahatmaji enquired if the Viceroy could give them an assurance that the London Conference was being called to frame the Indian constitution on the Dominion basis. Lord Irwin could add nothing to the terms of the Declaration that 'the natural issue of India's constitutional progress is the attainment of Dominion Status'. He explained that the Round Table Conference was designed to elicit the greatest possible measure of agreement for the final proposals which it would be the duty of His Majesty's Government to submit to Parliament, and that it was impossible for him or for His Majesty's Government in any way to prejudice the action of the Conference or to restrict the liberty of Parliament. The talks proved infructuous, and Mahatmaji and Motilalji returned to Lahore empty-handed.

Lord Irwin could not assure the Indian leaders that the Round Table Conference was being convened to frame the Indian constitution on the Dominion basis because of the determined opposition of Mr. Churchill, Lord Birkenhead, Lord Reading and other Tories, to the terms of the Viceroy's proclamation of October 31. Stanley Baldwin and Llyod George also disowned the declaration. Mr. Churchill described the idea of Dominion Status for India as a crime. Lord Birkenhead said in the House of Lords: 'What man in this House can say that he can see in a generation, in two generations, in a hundred years any prospect that the people of India will be in a position to assume control of the Army, the Navy, the Civil Service and to have a governor general who will be responsible to the Indian government and not to any authority in this country.' The Labour party was in office but not in power in Great Britain ; it did not like to risk its

office on the Indian issue. Its spokesmen therefore tried to conciliate the Tory diehards by temporising over the issue of 'Dominion Status here and now'.

Mahatma Gandhi realised that the Labour Government was not strong enough to carry out its policy in regard to India, unless England could be convinced that there was no alternative for her but to concede the Indian demand. Moreover, he saw that the country was drifting to violent revolution, and that the only way to stave off the revolution was to start civil disobedience. He therefore moved a resolution at the Lahore session declaring Complete Independence for India as the goal of Congress and rejecting the Nehru Report in conformity with the resolution passed at Calcutta a year ago. The following are the important passages occurring in it : 'This Congress appreciates the efforts of the Viceroy towards a settlement of the national movement for Swaraj. The Congress, however, having considered all that has since happened and the result of the meeting between Mahatma Gandhi, Pandit Moti Lal Nehru and other leaders, and the Viceroy, is of opinion that nothing is to be gained in the existing circumstances by the Congress being represented at the proposed Round Table Conference. This Congress ..... declares that the word Swaraj in Article 1 of the Congress constitution shall mean Complete Independence ..... and hopes that all Congressmen will henceforth devote their exclusive attention to the attainment of Complete Independence for India ..... This Congress authorises the All India Congress Committee, whenever it deems fit, to launch upon a programme of civil disobedience including non-payment of taxes, whether in selected areas or otherwise, and under such safeguards as it may consider necessary.' The stage was thus set ready for the second great national movement for the attainment of Swaraj. It was to be conducted in a strictly non-violent way and under the leadership of Gandhiji.

This resolution was assailed by all the other parties in the country. Even Maulana Mohammad Ali opposed it and asked the Muslims not to participate in the movement.

**The Civil Disobedience Movement.**— Along with the resolution declaring Complete Independence for India as its goal, the Congress had also passed a resolution calling upon all Congressmen to resign their seats in the various legislatures in the

country. The Council Front created by Deshbandhu Dass in 1923 was thus demolished. The Congress could carry on the struggle on one front only at a time. Along with the campaign of civil disobedience there could be no place for Congressmen in the legislature. Pandit Jawahar Lal Nehru, the President of the Lahore session, unfurled the flag of Independence on the midnight of December 31 on the banks of the Ravi in biting cold but in the midst of an enthusiastic and excited mammoth gathering.

The next step in the struggle was the celebration of January 26 as the Independence Day. On this day meetings were held in almost every town and village where the Independence pledge, approved by the Working Committee, was read and taken by millions of persons. It is too long to be reproduced here in full; only its first and last paragraphs are given below. It began as under :

'We believe that it is the inalienable right of the Indian people, as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life so that they may have full opportunities of growth. We believe also that if any Government deprives the people of these rights and oppresses them, the people have a further right to alter it or to abolish it. The British Government in India has not only deprived the Indian people of their freedom but has based itself on the exploitation of the masses, and has ruined India economically, politically, culturally and spiritually. We believe therefore that India must sever the British connection and attain Purna Swaraj or complete independence.'

and concluded with the following paragraph :

'We hold it to be a crime against man and God to submit any longer to a rule that has caused this fourfold disaster to our country. We recognise, however, that the most effective way of gaining our freedom is not through violence. We will therefore prepare ourselves by withdrawing, so far as we can, all voluntary association from the British Government, and will prepare for civil disobedience, including non-payment of taxes. We are convinced that if we can but withdraw our voluntary help and stop payment of taxes without doing violence even under provocation, the end of this inhuman rule is assured. We therefore hereby solemnly resolve to carry out the Congress instructions issued from time to time for the purpose of establishing Purna Swaraj.'

It may be mentioned that January 26 has been celebrated since then as the Independence Day. The substance of the pledge used to be repeated till India won her independence. Along with the 15th of August, it shall remain a memorable day in the national annals.

The reports from various parts of the country showed that the Independence Day was celebrated with great enthusiasm. The

members of the various legislatures in the country had also tendered their resignations in obedience to the resolution passed at the Lahore session. The Congress Working Committee had also vested Mahatma Gandhi with full powers to conduct the civil disobedience campaign. The stage was thus set ready for the great and heroic struggle of 1930.

The next step was the despatch of a long letter by Mahatmaji to Lord Irwin. It was demanded by the ethical code of Satyagrah. In the course of it Mahatmaji explained why he was forced to resort to the extreme step of starting civil disobedience and informed Lord Irwin that he would start it by breaking the Salt law with a few of his associates from the Sabarmati Ashram, unless the Governor General promised redress of the evils mentioned in it. The letter was carried by an English friend of Mahatmaji, named Reginald Reynolds on the 11th of March, 1930. The Viceroy's reply was disappointing, and so Mahatmaji announced his decision to start civil disobedience. He left the Ashram for Dandi on the 12th of March at the head of 79 members of his Ashram and students of the Vidya Pith to challenge and defy the might of the greatest empire the world has seen. At Dandi the salt law was to be broken by picking up salt at the sea-shore. The way to Dandi was to be covered on foot. This Dandi march has become historic ; Shri Subhas Chandra Bose compares it to Napoleon's march on Paris on his return from Elba, and to Mussolini's march on Rome with a view to the seizure of political power. The press gave the widest publicity to this epic march. The scenes that preceded, accompanied and followed it, were so enthusiastic, magnificent and soul-stirring that they beggar description. 'Never was the wave of patriotism so powerful in the hearts of mankind as it was on this occasion which is bound to go down to the chapters of history of India's national freedom as a great beginning of a great movement.' Thus wrote the *Bombay Chronicle* about the Dandi March.

The Government of India at first did not take the movement very seriously ; they did not expect the March to lead to any serious developments. The Anglo-Indian papers ridiculed the idea of salt satyagrah ; the Statesman wrote in an editorial that Mahatma Gandhi could go on boiling sea-water till Dominion Status was attained. Mr. Brailsford, an English journalist, described the Dandi March as

'the kindergarten stage of revolution'. He smiled at 'the notion that the King-Emperor can be unseated by boiling sea-water in a kettle.' Such persons could not look at the moral aspect of the technical breach of salt law by Mahatma Gandhi on April 6, which happened to be the first day of the national week celebrated to commemorate the Jalianwala Bagh tragedy. It was a signal for the breach of the salt law all over the country in which hundreds of thousands of persons participated in thousands of towns and villages. At places where salt law could not be violated because of the absence of saline water or earth from which to prepare contraband salt, other laws were violated; e. g., at Calcutta the Sedition law was broken by publicly reading seditious literature. In the C. P. forest laws were violated. Boycott of foreign cloth, boycott of British goods and picketing of liquor shops were begun on an extensive scale all over the country as parts of the campaign of civil disobedience. Mahatmaji gave permission to women also to participate in the struggle and advised them to resort to liquor and foreign cloth shop-picketing. This had a magic effect. Even women of orthodox and aristocratic families came forward and participated in the campaign. The way in which Indian women conducted themselves in the struggle was marvellous. It extorted praise from all. Their energy and enthusiasm seemed to be greater than those of men even. Their emancipation began from the day they came out of the privacy of their homes to join the struggle. It was one very happy result of the Civil Disobedience campaign.

The movement seemed to be spreading like a regular prairie fire; it set the whole country ablaze. The Government realized the seriousness of the situation, and adopted highly repressive measures to put it down. About half a dozen Ordinances were issued by Lord Irwin in order to cope with the situation. Arrest of leaders, workers and volunteers took place everywhere, and the Congress organisation was declared unlawful. Heavy fines and sentences of imprisonment became the order of the day. It is estimated that about sixty thousand men and women were placed behind the prison bars. The police resorted to free use of the *lathi*, and at places firing was resorted to to disperse crowds and processions, as a result of which hundreds lost their lives and a large number were wounded. The use of brute force did not cow down the new India that had arisen;

the greater the violence used by the Government to crush the movement, the more momentum did it gain. Each province had its tale of woe to tell as a result of the ruthless repression on the part of the Government. In Midnapore District a terrorist movement came into being for organising reprisals against officials. It is not necessary to describe further the events of those memorable and exciting days. The reports despatched to their respective papers by foreign correspondents and observers like Webb, Miller, George Solcombe and Brailsford bear eloquent testimony to the wonderful spirit exhibited by the people and the non-violent way in which they behaved under grave provocation. Mahatma Gandhi seemed to have infused new life into dead bones.

Before closing this very brief and inadequate account of the Civil Disobedience movement mention should be made of a few of its notable features. For a long time the initiative was with the people; the Government did not take the offensive at the very outset. It was a great mistake on its part; it let the movement spread like wild fire. On subsequent occasions the Government took stern action from the very start. No detailed instructions were issued to the people as to how they were to conduct it. The main items of the programme were, of course, known to them; and they were expected to remain non-violent. The people revealed remarkable powers of organisation and of initiative and resourcefulness. When the Government made it impossible for the press to give publicity to the Congress activities, the people started distributing cyclostyled copies of news bulletins, and at places began to broadcast news. Some new institutions like Prabhat Pheris and Vanar Senas came into being. As one leader or director was arrested, whether at the all-India level, or at the provincial, district, or city level, there was a successor available to carry on the work. When Pandit Jawahar Lal was arrested, he named Pandit Moti Lal as his successor. Motilalji named Sardar Patel as his successor, and so the struggle went on. One of the most remarkable phenomena was the way in which Indian women helped the movement by organising the picketing of liquor and foreign cloth shops. Their contribution was tremendous. It is estimated that from Delhi alone about 1600 ladies were sent to jail for picketing. Their participation lent a moral weight to the boycott movement. Nobody, not even the great

magician who wrought all this wonderful change, could have expected this splendid response on the part of Indian womanhood. Even small children below seven years of age played their own role as members of the news-sheet distributing squads and of *Prabhat Pheris*.

**The Round Table Conference.**— While the epic struggle between soul-force and naked brute force was going on in India and the people were displaying heroic courage in facing ruthless repression, the report of the Simon Commission was published. In spite of great efforts made by the Government to boost it, it was still-born. Indeed, it could not be otherwise ; the Report miserably failed to take note of the changed mentality and spirit of the New India that had arisen ; it was out of date even when it was published. 'It betrayed a monstrous lack of understanding, only equalled by a similar lack of sympathy.'\* Nobody paid attention to its recommendations : a large measure of self-government in the provinces but autocracy at the centre. Even the Central Assembly from which all Congress members had resigned rejected its recommendations in toto. The Indian Liberals who had consented to take part in the London Conference, without any assurances that it would frame a Dominion Constitution for India, demanded that it should not form the basis of discussion in the Conference.

The personnel of the Round Table Conference was announced on the 11th of September, 1930. Out of the 89 persons who participated in its deliberations 16 represented the three major political parties in the British Parliament, 16 represented Indian States and 57 British India. The British Indian delegation represented all interests except the Congress. Nationalist Muslims were also excluded. The members of the delegation from British India were nominated by the Governor General ; he did not consult the provincial legislatures or any other representative body while choosing them. This way of choosing the Indian delegation led Mr. Brailsford to remark that 'in St. James' Palace they did assemble Princes and Untouchables, Sikhs, Muslims, Hindus and Christians, and spokesmen of land-owners, trade unions, and chambers of commerce, but Mother India was not there.'

The Indian delegates arrived in London towards the end of

\* Zacharias : *Renaescent India*, page 269.

October, but the formal opening of the Conference did not take place before November 12 ; its actual work began on November 17. This interval was utilised for informal discussions between delegates from British India and the representatives of the States.

'Contrary to general expectation' writes Shri V. P. Menon, 'the first Round Table Conference achieved outstanding results, the most important being the unanimous agreement of all parties, including the rulers, on the issue of federation. Upto this time, all India federation had been regarded as only a remote possibility. But at the very outset of the Conference Sir Tej Bahadur Sapru boldly declared himself for a federal system of government and invited the rulers to support his suggestion. The Maharaja of Bikaner and the Nawab of Bhopal stated on behalf of the rulers that they were prepared to come into the proposed federation provided their internal sovereignty was guaranteed. Sir Mohammad Shafi for one wing of the Muslim League and Jinnah for the other, also welcomed the proposal.'

'Several factors contributed to this unanimity of opinion among the Indian delegates. The rulers had seen the trend of the civil disobedience campaign in British India. They had no illusions as to what would happen if this campaign were extended to the States. Furthermore, if they stood in the way of the progress of British India in the existing temper of the country they would be inviting immediate trouble to themselves. As for the Muslim League, it had always been opposed to a strong centre. It envisaged that the participation of the rulers in a Federation would ensure a Centre which would be limited to the minimum number of subjects, the residuary powers being retained by the federating units. Nor could the Labour Government, with its professed sympathy with Indian aspirations, turn down the unanimous recommendations of an Indian opinion consisting of Hindus, Muslims, and Princes at a time when the civil disobedience movement campaign was going on in full force in India.'

We can say that by staying away from the Conference and conducting the campaign of civil disobedience the Congress served the cause of the country in a better way than perhaps it could have done by joining it. It made the British Government and public realise the strength of public opinion behind the demand of the

Congress for freedom. It had forged a sanction behind its demand which could not be ignored. The British Prime Minister made the following declaration about the policy of His Majesty's Government in regard to the future of India at the conclusion of the session of the R. T. C.

'The view of His Majesty's Government is that responsibility for the government of India should be placed upon legislatures, central and provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights.

His Majesty's Government has taken note of the fact that the deliberations of the Conference have proceeded on the basis, accepted by all parties, that the Central Government should be a federation of all India, embracing both the Indian States and British India in a bicameral legislature. With a Legislature constituted on a federal basis His Majesty's Government would be prepared to recognise the principle of the responsibility of the Executive to the Legislature.

Under existing conditions the subjects of Defence and External Affairs will be reserved to the Governor General, and arrangements will be made to place in his hands the powers necessary for the administration of those subjects. Moreover, as the Governor General must, as a last resort, be able in an emergency to maintain the tranquillity of the State and must similarly be responsible for the observance of the constitutional rights of minorities, he must be granted the necessary powers for these purposes.

The Governors' provinces will be constituted on a basis of full provincial responsibility. Their ministers will be taken from the Legislature and will be jointly responsible to it. The range of provincial subjects will be so defined as to give them the greatest possible measure of self-government. The authority of the Federal Government will be limited to provisions required to secure its administration of federal subjects and to discharge its responsibility for subjects defined in the constitution as of all India concern.'

The Prime Minister concluded by saying that if there was response to the Viceroy's appeal from those who were engaged in civil disobedience, steps would be taken to secure their participa-

tion in subsequent deliberations of the Conference.

In view of their importance the main achievements of the first Round Table Conference may be summarised before proceeding further. It achieved three things. Firstly, it brought the idea of an all-India Federation\*, which had been assigned by the Simon Commission to an indefinite and remote future and about whose actualisation they had absolutely nothing, within the sphere of practical politics. Secondly, it accepted the principle of making the federal executive responsible to the federal legislature, to which not only the Tories but also the Liberals were opposed. They were not prepared to go beyond the Simon Commission recommendations which left autocracy in the Centre untouched. Thirdly, it provided for the reconstitution of provincial governments on the basis of full responsibility. Of course partial responsibility in the Centre and full provincial responsibility were subject to certain safeguards. These were interlinked, and constituted a great advance on the Act of 1919.

**Gandi-Irwin Pact.**— Within a week after the Prime Minister's statement, Lord Irwin lifted the ban on the Congress and unconditionally released Mahatma Gandhi and members of the Congress Working Committee on Jan. 26, in order to give them full and unfettered freedom to discuss the Prime Minister's statement. He said : 'My Government will impose no conditions on these releases, for we feel that the best hope for the restoration of peaceful conditions lies in discussions being conducted by those concerned under terms of unconditional liberty.'

On their return from England, Sir Tej Bahadur Sapru, Dr. M. R. Jayakar, and Sri Srinivasa Sastri saw Gandhiji and were able to convince him that the Labour Government was earnest and was willing to concede the right of self determination to India. A meeting between Lord Irwin and Gandhiji, who was invested with the powers of plenipotentiary, was arranged which resulted in settlement

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\* It is believed that when the Indian delegates to the R. T. C. were on their way to London, Messrs. Jayakar and Sapru held talks with the Maharaja of Bikaner and other Princes and persuaded them that their interests were identical with those of British India. The Princes had their own grouse against the British policy and therefore welcomed the idea of an Indian Federation. Against the combined Indian demand for an Indian Federation the British statesmen had to drop the Simon Commission idea of an autocratic centre.

being arrived at after protracted negotiations. The pact, generally known as the Gandhi-Irwin Pact, was signed on March 5, 1931. The following are its main provisions. On behalf of the Congress Mahatma Gandhi agreed to suspend the Civil Disobedience movement, to give up the demand for an enquiry into police excesses and other atrocities committed on the people during the movement, and to participate in the deliberations of the Round Table Conference. On behalf of the Government the Viceroy agreed to release all political prisoners sent to jail in connection with the Civil Disobedience movement, to restore confiscated property and land to the owners where it had not already been auctioned or otherwise disposed of, to withdraw the emergency ordinances, to permit the people living near the sea-coast to collect or manufacture salt without payment of duty, and to permit peaceful picketing of liquor, opium and foreign cloth shops.

The Pact had a mixed reception; a great majority of the people welcomed it as a great victory for the Congress, but the left-wingers condemned it as a surrender to the Government. According to Shri Subhash Chandra Bose it was a great disappointment to the politically minded section of the people and to the youth organisations in the country. Pandit Jawahar Lal Nehru was shocked by the terms of one of its clauses; the mention of reservations or safeguards in regard to matters like defence, external affairs, and the position of minorities distressed him. The people in Bengal showed no enthusiasm, for it did not secure the release of political prisoners convicted for violent activities. In spite of his best efforts Mahatmaji could not secure the commutation of the death sentence on Sardar Bhagat Singh and his two comrades to transportation for life. There were no doubt shortcomings in the Pact; but Mahatmaji did not like to break off negotiations on these points because a movement like that of civil disobedience cannot be continued for an indefinite period. Moreover, nothing vital was lost and no surrender of principle made in striking the settlement. Mahatmaji described the Pact as victory for both the sides. It was a victory for the common desire of both Mahatmaji and Lord Irwin to arrive at a settlement. It not only spared the nation the sufferings which in the event of breakdown would have been intensified, but also enhanced the power and prestige of the Congress. Pandit Jawahar Lal Nehru wrote in

his Autobiography that Delhi attracted all sorts of people during the days when negotiations were going on between Mahatma Gandhi and Lord Irwin. After their successful termination many a man who had kept himself at a safe distance from the Congress during the days of turmoil and conflict wanted to come near it and make amends for his past behaviour. Even the communalists desired to come to an understanding with the Congress. There is no doubt that as a result of having gone through the crucible of suffering the prestige of the Congress increased and the nation gained in moral height. The Pact 'stands as a monument to the good sense and high patriotism of both parties thereto.'\*

**After the Delhi Pact.**— The Pact was to be ratified by the Congress session held at Karachi under the Presidentship of Sardar Patel. One week before the Congress was to meet, Sardar Bhagat Singh and his two comrades were executed. This was a great strain on the Pact and the extremists within the Congress made full use of the event to run it down. But Mahatmaji carried everything before him, and the Pact was ratified.

If Lord Irwin had stayed in India for another year as Viceroy and there had been no change of government in Great Britain, it is possible that the provisional agreement arrived at between two noble souls at Delhi would have paved the way for a proper solution of the Indian problem and led to a lasting understanding between India and Great Britain. The two countries would have united in a common friendship to the advantage of both. But fate willed otherwise. Lord Irwin was succeeded by Lord Willingdon, a man with an entirely different nature and reputation, and the Labour Government was replaced by one largely Tory in colour. Mr. Wedgwood Benn made way for Sir Samuel Hoare as the Secretary of State for India. These changes altered the situation in both the countries very much. In India the Congress complained that Government officials did not observe the terms of the Gandhi-Irwin Pact ; it was alleged that they honoured the pact more in breach than in observance. A long list of alleged breaches was prepared and sent to the Government. A long drawn-out correspondence between Mahatmaji and the Government ensued and the former informed the latter that under the circumstances he could not proceed to England to participate in the R. T. C.

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\* *Zacharias : op. cit., page 274.*

This was on August 13, 1931. The Government, on their side, complained that the Congress was not observing the terms of the Gandhi-Irwin Pact. There was an interview between Mahatma Gandhi and Lord Willingdon at Simla at which an understanding was arrived at and Mahatma Gandhi agreed to sail for London, as the sole representative of the Congress. The Government also nominated Pandit Madan Mohan Malaviya and Shrimati Sarojini Naidu in their individual capacities.

The wisdom of the decision of the Congress to send Mahatma Gandhi as its sole representative to the London Conference has been questioned by some persons. They think that the hands of the Mahatma would have been greatly strengthened by the presence of a large and strong contingent of Congress leaders. If the issue before the Conference were the settlement of a constitution for India, the presence of a large number of Congress delegates would have been necessary and useful. But that was not the question at issue. The real problem was how much power was to be transferred to the people of India. For explaining the Congress position and demand and showing its reasonableness one man was enough, and Gandhiji as the leader of the nation was the best person for the job. Moreover, it was considered wise to have the top-ranking leaders here at home because of the necessity of a tactful handling of the situation which was critical enough. It was felt that, inspite of the R. T. C. meeting in London, the centre of gravity lay in India. It was also decided that in case Mahatmaji felt it necessary to call some of the members of the Working Committee to London for consultation, they could reach there within a week's time. On the whole the decision was sound ; the country did not suffer because of it in any way.

**The 2nd R. T. C.**— Mahatma Gandhi sailed for England on the 29th of August, 1931, to participate in the second session of the Round Table Conference which began on the 7th of September. He reached London on the 12th, five days late. He was late in another sense also. Dr. Zacharias is of the opinion that Mahatma Gandhi's participation would have been productive of more good had he attended its first session when Labour was in office, and no decisions had been arrived at. But he arrived at a time, when due to a financial crisis the Labour Government had resigned (August 26),

and Mr. Ramsay MacDonald had formed a new government, *National* in name, but largely Tory or Conservative in colour. Important decisions had already been taken which could not be changed. We do not share this view. It was the Civil Disobedience movement which led the British Government to concede partial responsibility at the Centre. But to continue the story, there was a further change in Great Britain. A general election was held in October whose outcome was a predominantly Conservative House of Commons. These changes proved most unfavourable for the Indian cause ; such of the British delegates as were friendly to India were either left out or pushed into the background, while those hostile to her emerged into prominence. Mr. Wedgwood Benn was replaced by Sir Samuel Hoare who was reputed to be a strong man. Thus the spirit which pervaded the first session was absent from the second ; the attitude of the British delegation was completely changed. 'Under Mr. Benn the Conference in 1930 had been a real joint deliberation of peers ; under Sir Samuel Hoare in 1931 it was a tiresome legacy of a pompous debating society that was being liquidated.'\*

The Conference was ostensibly called for the purpose of settling the dispute between England and India and arriving at an amicable settlement of the Indian constitutional problem. Things were, however, manoeuvred in such a way that the communal problem loomed large in every direction. The constitutional problem was side-tracked, and in order to discredit Indian demands a minor problem was pushed into lime-light. Mahatma Gandhi was anxious to solve the communal problem, else to postpone it for future consideration, so that a concentrated effort might be made by the Indian delegation to whittle down safeguards and get real self-government for India. But his efforts could bear no fruit. The composition of the Indian delegation was such that it made the solution of the communal problem well-nigh impossible. It contained persons who lived and thrived on communal differences. Persons who could have taken a reasonable attitude towards communal problems and striven their utmost to find a solution for them most earnestly were never nominated to the Conference. Efforts to get men like Dr. Ansari invited to it did not succeed. Wire-pulling by politicians in Britain who were anxious to perpetuate British power in India by the

\* Zacharias : *op. cit.*, page 281.

policy of divide and rule also made any reasonable solution of the problem impossible. The demands made by various delegates on behalf of their respective communities were incompatible. The Muslims wanted absolute majority in the Punjab and Bengal, the retention of excessive weightage in the provinces (where they were in a minority) granted to them under the Lucknow Pact, and one-third representation in the Centre. The Sikhs wanted weightage in the Punjab similar to that granted to the Muslims in Assam, Bombay, the U. P., and Madras. It was impossible to reconcile the Muslim claim for absolute majority in the Punjab with the Sikh claim for weightage and the rights of the Hindus. Similarly, the Muslim claim for an absolute majority in Bengal could not be made square with the demands of the Europeans for weightage. The Depressed Classes, following suit, claimed separate representation for themselves. An atmosphere in which each community made excessive claims for itself and was unmindful of national interests was hardly conducive to the settlement of such a thorny question. Little wonder that Mahatma Gandhi failed in his efforts. He admitted with 'deep sorrow and deeper humiliation' his inability to secure an agreed solution of the communal problem. The insistence of the Moslem members that they would not participate in the general constitutional discussion until *all* their demands were conceded was most unfortunate and obstructive. The Moslems joined in an unholy alliance with reactionary British interests, and the result was the notorious Minorities Pact. The following extract from a confidential circular issued by Loyalists in which group Mr. Benthal, the representative of the British interests in India, was included, throws much light on the shameful way in which the communal question was handled in the R. T. C.: 'The Muslims were a solid and enthusiastic team ..... They played their cards with great skill throughout; they promised us support and they gave it in full measure. In return they asked us that we should not forget their economic plight in Bengal ... and do what we can to find places for them in European firms so that they may have a chance to improve their material position and the general standing of their community ... after the general election the right wing of the Government made up its mind to break up the Conference and to fight the Congress. The Muslims who do not want responsibility at the centre were delighted ..... We had made up our minds that the fight with the Congress

was inevitable ; we felt and said that the sooner it came the better, but we made up our minds that for a crushing success we should have all possible friends on our side. The Muslims were all right ; the Minorities Pact and the Government's general attitude ensured that. So were the Princes and the Minorities ... The Muslims have become firm allies of the Europeans. They are quite satisfied with their own position and are prepared to work with us.\* Such an unholy alliance would have been an impossibility if another set of representative Muslims had been invited to the Conference. The net result of all this intriguing was the inability of the Minorities Sub-Committee to solve the communal problem. The matter was left to be solved by the Prime Minister and the initiative thus passed from Indian to British hands. This was the origin of the infamous Communal Award which contains the British Government's solution of this vexed question, a solution which is most unfair to some and most favourable to other communities. The details of the Award will be examined in another context.

The following extract from the Autobiography of Jawahar Lal Nehru describes very aptly the true nature of the proceedings of the London Conference and the causes of its failure. He writes as follows: 'The scales were terribly loaded against us at that Conference and, little as we expected from it, we watched its proceedings with amazement and ever-growing disgust. We saw the pitiful and absurdly inadequate attempts to scratch the surface of national and economic problems, the pacts and intrigues and manoeuvres, the joining of hands of some of our own countrymen with the most reactionary elements of the British Conservative Party, the endless talk over petty issues, the deliberate shelving of all that really mattered, the continuous playing into the hands of the big vested interests and especially British imperialism, the mutual squabbles, varied by feasting and mutual admiration. It was all jobbery— big jobs, little jobs, jobs and seats for the Hindus, for the Muslims, for the Sikhs, for the Anglo-Indians, for the Europeans ; but all jobs for the upper classes, the masses had no look-in. Opportunism was rampant, and different groups seemed to prowl about like hungry wolves waiting for their prey— the spoils under the new constitution. The very conception of freedom had taken the form of large-scale jobbery ....

\* Quoted by S. Sardul Singh Caveeshar in *Non-Violent Non-Cooperation*, page 245.

No one thought in terms of independence, of the transfer of power to a democratic India, of the solution of any of the vital and urgent economic problems facing the Indian people .....

'In that crowded and gilded hall Gandhiji sat, a very lonely figure. His dress, or absence of it, distinguished him from all others, but there was an even vaster difference between his thought and outlook and that of the well-dressed folk around him. His was an extraordinarily difficult position in that Conference, and we wondered from afar how he could tolerate it. But with amazing patience he carried on, and made attempt after attempt to find some basis of agreement ....."\*

This long extract explains why Mahatma Gandhi failed to solve the various problems which confronted him and the Conference. He had gone to London to try and turn the truce arrived at between him and Lord Irwin into a permanent settlement. But circumstances were too strong for him. The British Government were not at all anxious for a settlement of the problem; nay, as is clear from the contents of the circular letter of Mr. Benthal, they were getting ready for a fight with the Congress. The Bureaucracy in India had not at all liked the way in which Lord Irwin had dealt with the Congress and concluded an agreement with Mahatma Gandhi on terms of equality; its training and authoritarian conception of government were opposed to it. The British Government manoeuvred things in such a way that the consideration of fundamental questions was postponed and the Conference lost itself in the consideration of minor matters. The great majority of Indian leaders fell in with this official manoeuvring willingly or unwillingly. Mahatmaji was pained by this unbusinesslike character of the proceedings of the Conference and described it as a 'long, slow agony'.

The 2nd session of the R. T. C. whose sole outcome was the widening of the cleavage between the Congress and the minorities, specially the League, was concluded on December 1, 1931. Mahatmaji had a mind to prolong his stay in England to recuperate his health and also to tour the Continent. But he received urgent summons from his co-workers here at home where the situation was deteriorating rapidly. He cancelled his tour and returned post-haste to India,

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\* Jawahar Lai Nehru : *Autobiography*, pages 293-94.

visiting Romain Rolland and Signour Mussolini on the way.

**The Struggle Resumed.**— What Mahatmaji saw and sensed in England made him feel that the Congress and the British Government had come to a parting of the ways. He gave expression to this feeling while moving a vote of thanks to the Prime Minister. Before leaving London he told a press interviewer that an immediate revival of nation-wide movement of civil disobedience was out of the question, but there was the possibility of local civil disobedience being resorted to as a protest against specific acts of injustice or high-handedness on the part of the government.

The British Government, however, looked at the situation from a different angle. As has been pointed out earlier the Indian Civil Service hierarchy did not at all like the way in which Lord Irwin had concluded an agreement with Mahatma Gandhi on terms of equality. They thought that it had added to the prestige of the Congress and it was time that it was brought down. The contents of the confidential letter circulated by Mr. Benthal also show that the British Government had made up its mind to give the Congress a fight and teach it a lesson. Both Sir Samuel Hoare and Lord Willingdon had decided 'not to wait, until the struggle had proved itself either violent or non-violent, but were resolved to prevent any struggle from developing.\* So when Mahatma Gandhi landed at Bombay on the 28th of December, 1931, an ugly situation in India faced him. During the period he was away at London the Government of India had resorted to highly repressive measures in the U. P., Bengal, and the N. W. F. Province. In Bengal there had been a recrudescence of revolutionary terrorism, chiefly by way of retaliation against the oppressive and high-handed acts of government officials; and to curb these activities the Government had promulgated an ordinance which introduced a veiled form of martial law in the district of Chittagong. In the North Western Frontier Province an ordinance was issued declaring the Red Shirt Volunteers an illegal body, and their leader Khan Abdul Gaffar Khan and his brother were arrested and taken to a distant prison. In the U. P. an ordinance was issued to crush the limited no-rent campaign which the local Congress Committee had decided to start. On top of all this Pandit Jawahar Lal Nehru and Mr. T. A. Sherwani were arrested when

they were on their way to Bombay to meet Mahatmaji. The Congress Working Committee considered the situation and authorised Mahatmaji to seek an interview with the Viceroy. Mahatmaji addressed the following telegram to the Viceroy : 'I was unprepared on landing yesterday to find the Frontier and the U. P. Ordinances, shootings in the Frontier and arrests of valued comrades in both and on the top, the Bengal Ordinance awaiting me. I do not know whether I am to regard these as an indication that friendly relations between us are closed or whether you expect me still to see and receive guidance from you as to the course I am to pursue in advising the Congress.' The Viceroy sent a long reply and said that he was not prepared to discuss the measures which had been adopted by the Government of India, with the fullest approval of His Majesty's Government in England, to meet the situation in Bengal, the U. P. and N. W. F. P. The Working Committee considered this reply and passed a resolution in which it expressed its readiness to cooperate with the Government in various matters provided a satisfactory response was forthcoming to its demands, and called upon the country to resume civil disobedience if such response was not forthcoming.

The response of the Government came in the form of the arrest of Mahatma Gandhi and the members of the Working Committee at dead of night and the sweeping arrests of Congress leaders all over the country before they could get time to start civil disobedience. 'Within a week almost everybody who was somebody in the Congress party was in prison.'\* In this way the Government took the initiative and launched a fierce onslaught on the Congress. The Government had perfected its plans of attack during the period of the truce, whereas the Mahatma was pursuing a peaceful policy and was neither willing nor ready for the resumption of the movement. But the Government of India dragged him and the country into the fight. This was the main and vital difference between the Non-Cooperation Movement of 1920-21 and the Civil Disobedience Movement of 1930 on the one side, and the struggle of 1932 on the other. In the first two cases the initiative was with the Congress, the Government was on the defensive. Moreover, the latter was unfamiliar with the new method and did not know how to deal

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\* Subhas Chandra Bose : *The Indian Struggle*, page 334.

effectively with a movement of this sort. In the struggle of 1932 the initiative was taken by the Government who had prepared effective measures for crushing the movement before it got under way; the Congress was on the defensive.

In spite of the fact that the Congress was not prepared for the struggle and the Government dealt it a very heavy blow at the very outset, Lord Willingdon could not carry out his boast that he would crush the Congress in six weeks' time. The Government declared the Congress and allied or sympathetic organisations illegal. The total number of associations thus outlawed must have been several thousands. Their funds and properties were seized, and orders were issued that no one should help them with funds or in any other way. Even giving shelter to Congress volunteers was made an offence. Meetings and processions were banned, and the nationalist press was effectively gagged. In some places even the names of arrested persons could not be published. Heavy fines were imposed to hit the helpers and sympathisers of the Congress economically. 'The Government countered Congress with every resource at its command; India lived practically under martial law, and Congress never really got back the initiative or any freedom of action.\* It is believed that the sufferings and hardships undergone by the people during 1932 were far greater than those in 1931. The severity and ruthlessness of the measures adopted by the Government was unprecedented since the days of the Mutiny. Even Sir Samuel Hoare admitted in the House of Commons that the Ordinances promulgated by the Government of India were very drastic and severe and covered almost every activity of Indian life. Despite all this the movement continued with unabated vigour for the first eight months of the year. There was no dearth of civil resisters; the response of the country to the challenge of the Government was remarkable. According to official figures 14,800 persons were arrested in January, and 17,800 in February, 1932. Up to the 20th of April 66,646 persons including 5,325 women, had been sent to jail. The total number of arrests according to Congress estimate was not less than 80,000 during the first four months. The jails were overcrowded and ordinary convicts were released to make room for political prisoners. Finding it difficult to accommodate the Congress volunteers in jails Government changed its

\* Jawahar Lal Nehru : *Autobiography*, page 328.

tactics. Instead of arresting Congress volunteers for defiance of ordinances, it began to use force in preventing demonstrations. It is needless to describe the character of this struggle in which all the brutality and ruthlessness was on one side and all the suffering and privation on the other. The people braved all their hardships unflinchingly. Inspite of the efforts of the Government to prevent the holding of the annual session of the Congress, the citizens of Delhi were able to hold it near the Clock Tower under the Presidentship of Shri Ranchorddas of Ahmedabad. It was attended by more than 700 delegates from different parts of India. The police arrived on the scene after the proceedings had been gone through, and arrested a large number of persons. The next session was held under similar conditions at Calcutta under the presidentship of Mrs. J. M. Sen-Gupta in the absence of the President-elect, Pandit Madan Mohan Malaviya, who had been arrested earlier. It was attended by about 2500 delegates. The following extract from the speech of the President-elect reflects the feelings of the people: 'It is estimated that nearly 126,000 persons including several thousand women have been arrested and imprisoned during the last fifteen months ..... Fifteen months have not enabled the Government to achieve that object (that of crushing Congress in six weeks' time). Twice fifteen months will not enable it to do so.'

The struggle continued, but in a greatly toned down form. The frightfulness of the repressive measures adopted by the Government did not kill the spirit of the people, but it made impossible the external manifestations which featured so prominently during the 1930 struggle. Boycott of British goods was an important part of the programme. When the preaching of boycott of British goods was made a penal offence, people began to preach 'Buy Indian things'. Some persons were arrested and sent to jail even for propagating the cult of 'Buy Indian.'

**Mahatmaji's Fast, the Poona Pact and After.**— While the struggle was going on in the country, the British Prime Minister announced his decision on the communal problem on August 17, 1932. Among other objectionable features it proposed the creation of separate electorates for the Depressed Classes,— a provision against which Mahatmaji had given warning to the authorities in England. On March 11 Gandhiji wrote to Sir Samuel Hoare that if

the Government proposed to tear away the Depressed Classes from the main body of Hindus by creating separate electorates for them, he would resist the attempt with his life. It seems that the authorities in England did not take the warning seriously, since the Communal Award created separate electorates for the Depressed Classes. Mahatmaji announced his decision to fast unto death. The fast was to cease only if the British Government, either of its own accord or under pressure of public opinion, withdrew the scheme. The publication of the news caused great consternation throughout the length and breadth of the country, and frantic appeals were made to him to give up the idea. But nothing availed, and the fast was begun on the 20th of September, 1932. Pandit Madan Mohan Malaviya called a conference of Hindu leaders at Bombay to deliberate as to how to save the life of Mahatmaji. The meeting changed its venue to Poona after a preliminary discussion at Bombay. The result of the deliberations of the Conference was the famous Poona Agreement which was ratified by the Hindu Mahasabha and later on accepted by His Majesty's Government. It gave to the Depressed Classes 148 seats in place of the 71 provided for them in the Communal Award, but on the basis of a common electorate for all the Hindus. The other details of the Poona Agreement will be described elsewhere ; they do not concern us here.

Mahatmaji's fast gave a great fillip to the movement for the eradication of untouchability. It had, however, an adverse effect on the civil disobedience movement. After the successful termination of the fast Mahatmaji began to direct the campaign against untouchability from behind the prison-bars. This diverted the attention of the people and the workers away from the civil disobedience movement. Many a worker gave up the political fight and turned to anti-untouchability work.

Meanwhile, the Civil Disobedience Movement went on in the country, though in a much weaker form. The severity of government repression made frequent mass demonstrations impossible. In order to prevent it from fizzling out and rouse the enthusiasm of the people the Independence Day was celebrated on the 26th of January as usual, and in April an attempt was made to hold the Congress session at Calcutta. On both the occasions Government used force to stop demonstrations and arrested a large number

of persons.

While still a prisoner in the Yervada Jail, Mahatmaji announced his intention to go on a three weeks' fast as 'a heart-prayer for purification of myself and my associates, and for greater vigilance and watchfulness in connection with the Harijan cause'. The fast commenced on May 8, 1933, and on the same day Mahatmaji was unconditionally released. Almost the first thing he did on release was to advise the Congress Acting President to suspend the Civil Disobedience Movement for six weeks and himself appealed to the Government to withdraw the Ordinances and release the political prisoners. The movement was suspended first for six weeks and then for another six weeks, but the Government did not withdraw the Ordinances or release the political prisoners. Mere suspension of the movement did not satisfy it ; it demanded its unconditional withdrawal. On July 24 Mahatmaji advised the Acting President to suspend *mass* civil disobedience. He himself disbanded his Ashram at Sabarmati and announced his intention of starting individual civil disobedience in Ras village in Kaira district and urging people to do the same there. Upon this he was put under arrest and lodged in the Yervada Jail for one year. In the jail again, he demanded facilities for carrying on Harijan work which were extended to him in 1932, but the Government refused. He thus decided to fast again. The Government again released him. On coming out of prison he decided not to offer civil disobedience till the expiry of his one year's term, and devoted all his energies to the campaign against untouchability. This decision, however sound and justifiable on moral grounds, meant the death-knell of individual civil disobedience. Mahatmaji undertook a tour of the country for the Harijan cause. The terrible earthquake in Bihar took him to that afflicted province where he had talks with several of his co-workers. As a result of these talks, searching of heart and waiting upon God, he came to the conclusion that he should take the responsibility of civil disobedience upon himself alone. He therefore advised the A. I. C. C. at the meeting held at Patna to give up individual disobedience as well. In this way the struggle forced upon the nation by the Government of Lord Willingdon which had prepared itself fully for a crushing onslaught on the Congress ended in an apparent victory for the former and defeat for the latter. The

Congress suffered defeat in the sense that it had to withdraw its campaign of civil disobedience without achieving its objective. The frightfulness of Government made organised defiance of ordinance regime and demonstrations, etc., impossible. The Government, however, did not succeed in crushing out of existence the spirit of revolt against foreign rule. Repression can merely repress the spirit of freedom for a time but cannot altogether destroy or eradicate it.

Meanwhile a number of Congressmen were drifting to the idea that under the conditions prevailing in the country the programme of council-entry should be revived. Messrs. N. C. Kelkar and Jamnadas Mehta called a conference of the Democratic Swaraj Party early in 1934 to popularise the idea. A little later, Dr. M. A. Ansari and Dr. B. C. Roy summoned a meeting of Congressmen of their way of thinking at Delhi in March which resolved to revive the Swaraj Party to contest the elections to the legislature. A larger conference was called in the following month at Ranchi in Bihar where Mahatmaji was expected to be available for advice. It ratified the decision of the Delhi Conference. In May 1934, the A. I. C. C. met at Patna after an interval of about three years, and formally decided to give up the campaign of individual Civil Disobedience and allow Congressmen to enter the legislatures. Mahatmaji alone was given the right to offer civil disobedience, if and when he chose. In this way the Congress reverted to the Council Front for marking time. Instead of allowing the Swaraj Party to function, the Congress assumed responsibility of contesting the elections itself and set up a Parliamentary Board for selecting candidates for election to the Central Assembly. After the Congress had given up Civil Disobedience and decided to contest the elections, the Government removed the ban on Congress organisations and allowed them to function.

**Elections to the Assembly.**— The election to the Central Legislative Assembly were held in November, 1934. As has been pointed out above, the Congress decided to participate in them and contested almost every general seat and achieved grand success. It swept the polls in almost every province except in the Punjab, and thereby demonstrated to Lord Willingdon that, despite the severity of his repressive measures, it was very much alive and kicking. The most important contest was for the Commerce seat in South India.

Sir Shanmukham Chetti, who had been elected President of the Central Assembly after his return from Ottawa, and Shri Venkatachalam Chetti were the two rival candidates. The first was backed by the Governments of India and Madras. Sir Mohammad Osman, the ex-Home Member of the Madras Government, and the Raja of Bobbili, the Chief Minister of Madras, were among the chief signatories to his election manifesto. The latter was supported by the Congress. It was thus a contest between the Government and the Congress. The constituency was an enlightened one and quite small. The election was so timed as to lead almost every other election throughout the country; its result was expected to influence elections elsewhere. In several ways it was a test fight. The Congress which the Government of Lord Willingdon had hoped to crush once for all by the use of brute force and frightfulness came out successful in the contest; its candidate defeated the Government nominee by a handsome margin of votes.

The Congress party gave a good account of itself in the Assembly, and with the help of other progressive elements in the Assembly it was able to inflict defeat on the Government on several occasions.

**The Third R. T. C.**— During the years 1932-35 the British Government followed a dual policy in India. On the one side, it took the severest measures against the Congress; on the other, it pushed on with the work of constitution-making. The Government of India set up a Consultative Committee for keeping itself in touch with the leaders of parties other than the Congress and for considering the reports of the Franchise, Federal Finance, and Indian States Enquiry Committees.

In England Sir Samuel Hoare, the Secretary of State for India, did not favour the idea of holding any more sessions of the Round Table Conference and wanted to revert to the Simon Commission plan of inviting Indians to put their case before a committee of Parliament which was to decide the future constitution of India. An announcement was therefore made on June 27, 1932, to the effect that the third session of the R. T. C. was abandoned. The Indian Liberals felt exceedingly annoyed at this, and as a protest against the decision their leaders resigned membership of the Consultative Committee. This had some effect on the Government, and the

Viceroy announced before the Assembly that a small body of representative Indians from British India and the Indian States would be invited to London to hold discussions with British representatives. In short, the British Government reluctantly agreed to convene the third session of the R. T. C. It was held from November 17 to December 24, 1932, with only 46 delegates. The Congress was in the wilderness and therefore there could be no question of its participation. None of the important members was present ; it seems they had lost their enthusiasm for the federation. The British Labour Party also refused to participate in it because its nominees, Mr. Wedgwood Benn and Professor Lees Smith, were not acceptable to the Government lest they should create a split in the British delegation. From India only safe men were invited. Even the nominees of the Hindu Mahasabha and the President of the Indian Liberal Federation were not invited. The Conference considered three main problems— safeguards, the terms under which the States were to join the Federation, and the allocation of residuary powers. The Secretary of State announced at this session that Sind was to be constituted into a separate province and that the Muslims were to be given 33½ % seats in the federal assembly. Orissa was also to be made into a separate province. An effort was made by the British Indian delegation to get a Bill of Rights incorporated in the Constitution, but it was vetoed by the British authorities.

After the session was over, the British Government published their proposals in the form of a White Paper. These proposals fell far short of the Indian demands. Even the Liberals were dissatisfied with them. All the important powers the exercise of which alone can be said to confer the status of a free nation on a people were reserved for the Governor General ; Foreign Relations and Defence were the vital departments with which the popular ministers had nothing to do. Unsatisfactory and disappointing as the proposals of the Government were, they were further whittled down by the Joint Parliamentary Committee which sat for eighteen months and examined a large number of witnesses, and by the British Parliament, too, when the matter came up before it in the form of a bill. All this was done to accommodate and please the die-hard element in Parliament. The net result of this long process which began with the appointment of the Simon Commission in 1928 and ended with

the introduction of the Bill in Parliament was the Government of India Act of 1935. The main provisions of this Act will be examined in the next two chapters.

## CHAPTER XI

### THE GOVERNMENT OF INDIA ACT, 1935

#### THE FEDERAL GOVERNMENT

**Introductory.**— The Government of India Act of 1935 constitutes the second milestone on the road to full responsible government, the Government of India Act of 1919 being the first. The circumstances under which it was passed by the British Parliament have been explained at sufficient length in the preceding chapter ; they may be recapitulated here briefly. In accordance with the provisions of the Government of India Act of 1919 the Tory Government sent the All-White Simon Commission to this country to inquire into the 'system of Government, the growth of education and the development of representative institutions in British India and matters connected therewith', and to report 'as to whether and to what extent it is desirable to establish the principle of responsible government then existing therein'. This Commission was boycotted in India, and its report was still-born. The Labour Government which had succeeded the Tory Government in Great Britain convened a Round Table Conference consisting of representatives of the three main parties in Great Britain and of British India and the Indian States. It held three sessions between 1930 and 1932, only the second of which was attended by Mahatma Gandhi as the sole representative of the Indian National Congress. During the second and third sessions the Conservatives were in power. They made common cause with reactionary and communal elements in the Indian delegation, and manoeuvred things in a way which made the decisions of the R. T. C. most unsatisfactory from the point of view of Indian Nationalism. The decisions arrived at the third session of the R. T. C. formed the basis of the provisions of the Government of India Bill introduced by Sir Samuel Hoare in Parliament. Like its predecessor of 1919, it also was referred to a joint committee of both the Houses, which examined it thoroughly. On the committee's report the Bill was recommitted to Parliament and finally emerged as the Government of India Act of 1935. Its provisions were determined by the relative strength of the diverse

forces which were pulling in opposite directions. They were : (i) Indian Nationalism, (ii) British Imperialism, (iii) Indian Communalism, and (iv) the Indian Princes. Of these the first was the weakest, and the second, supported as it was by the third and the fourth, the strongest. This explains why the Act of 1935 was most disappointing from the Indian point of view. It had, however, one important feature which distinguished it radically from all its predecessors. While it was on the anvil representatives of the Indian people and of the Indian Princes sat round the same table along with representatives of the three British Parties for arriving at agreed decisions. Never before in the history of Indian constitutional development were Indians invited for deliberation on a footing of equality.

**Basic Features of the Act.**— We saw in an earlier chapter that the Government of India Act 1919 took the first step towards the introduction of responsible government in the country by introducing dyarchy in the provinces. The Act of 1935 carried the process one step further by abolishing dyarchy and establishing responsible government in the whole sphere of provincial administration. The distinction between reserved and transferred subjects was done away with, and all provincial subjects were brought within the ambit of ministerial responsibility. But the establishment of full responsible government in the provinces could have no meaning without their being freed from the control of the Central Government. This was achieved by making the provinces autonomous units. The establishment of provincial autonomy, implying both the autonomous status of the provinces and the grant of full responsible government— may thus be regarded as the first and most important feature of the Act of 1935. Its nature and significance will be explained later on. But provincial autonomy is incompatible with an irresponsible central government ; it necessitated the democratisation of the Government of India. Moreover, Indian opinion had been demanding for long some degree of responsibility at the Centre. The Act of 1935, therefore, conceded partial responsibility at the centre. Some of the central subjects were to be administered by the Governor General with the help and advice of popular ministers, and others by him in his discretion. In short, the Act introduced dyarchy at the Centre,

The decision to introduce partial responsibility at the Centre,

in its turn, meant that the ideal of an Indian Federation, 'which the Simon Report had left in the clouds,' became a practical proposition. The British Government was not prepared to transfer power to the peoples' representatives at the Centre, even to a limited extent, without assuring itself that there would be a stable and conservative element to act as a check on the radical elements which were bound to get there. This stabilising factor was made available in the shape of the representatives of the Indian States in an All-India Federation. There were other considerations also which favoured the federal idea, but what made it look like a practical proposition was the readiness of the Indian States to join the proposed Federation. The proposal to establish a new polity in which the British Indian Provinces and the Indian States were to be united on the federal principle was thus one of the most vital and fundamental provisions of the Act of 1935.

Provincial autonomy, partial responsibility at the Centre, and an All-India Federation were thus inter-linked; one necessarily led to the other. But none of them was accepted in an unqualified form in the Act of 1935. Provincial autonomy was subject to the special responsibilities and discretionary powers of the Governor; responsibility at the Centre was similarly hedged in by reservations and safeguards. Reservations and safeguards were thus as essential a feature of the Act as the proposal to transfer power to the peoples' representatives in the Provinces and at the Centre. They will be described in detail in a subsequent section. Similarly, the federal principle had to be diluted and adapted in several ways to suit Indian conditions and British interests. It was an accident in the execution of the British policy in regard to India and not the expression of any inner urge on the part of the people. It was a proposal to unite together partial democracy and autocracy in an unnatural whole. Moreover, as has been shown already, accession to the Federation was compulsory for some units and optional for others. The extent of the authority of the federal government was not exactly the same in regard to the various units of the Federation. It is not necessary to labour the point further.

Lastly, it may be pointed out that the Act did not in any way derogate from the sovereign authority of the British Parliament over India. The right to amend, alter or repeal the constitutional law

remained vested in Parliament. The Act separated Burma from India, and Aden from Bombay.

**Distribution of Powers.**— A federal constitution like the one proposed in the Government of India Act 1935 or the one adopted by the Constituent Assembly on November 26, 1949, essentially means a voluntary union of politically autonomous states under a common or national government in such a way that the national government and the governments of the federating states have, each of them, a definite and allotted sphere in which each is supreme. This means that the Constitution clearly demarcates the federal from the state sphere, and assigns some subjects to the federation and makes the federal legislature the sole and sovereign authority to legislate upon them. It assigns others to the federating units, giving their respective legislatures the right to legislate upon them for their respective citizens without any interference on the part of the federal legislature. Federalism essentially involves such a distribution of powers between the federal government and the governments of the federating units. There can be no federal constitution without it. There are two ways in which the totality of governmental powers may be divided between the government of the federation and the governments of the units. The powers which the units agree to surrender to the federal government may be positively named, and the whole of the unspecified remainder is then left to the units. In other words, the powers of the former are positively determined ; those of the latter, negatively so. This is the American plan. The other method is to specify the powers of the federating units and leave the unspecified residue to the federal government ; here the powers of the units are positively determined, and those of the federal government negatively. This plan was adopted in Canada in order to make the central government strong. In the Act of 1935 neither of these two usual methods was adopted. Nationalist opinion headed by the Indian National Congress wanted to name positively the powers assigned to the Provinces and leave the residue to the Federal Government with a view to making the Centre strong. The Muslim League did not want a dominating Centre but desired powerful units, and therefore insisted upon specifying the powers of the Centre and leaving the remainder to the Provinces. British Imperialism agreed with the national view

but did not want to displease the communalists, and so adopted a novel plan. The Act of 1935 enumerated the subjects allocated to the Federal Government in the Federal List, and specified the subjects allotted to the Provinces in a second list called the Provincial List. It thus specified the powers of both the federal and federating governments positively. There is also a third list called the Concurrent List. Both the federal and provincial legislatures were to have concurrent powers to legislate upon subjects included in this list. An effort was made to exhaust all the subjects of legislation and include them in the one or the other of the three lists. In case a subject was discovered which did not find place in any of the lists, the Governor General was to determine whether it fell within the competence of the Federal or of the Provincial Legislature. The question of residual powers was settled in this novel way.

The Federal Legislature alone had the power to legislate upon the subjects mentioned in the Federal List. They were 59 in number. The more important of them were the following : His Majesty's naval, military and air forces borne upon Indian establishment ; naval, military and air force works ; external affairs ; ecclesiastical affairs ; currency, coinage and legal tender ; public debt of the Federation ; posts and telegraphs, including telephones, wireless, broadcasting, etc., and the Post Office Savings Bank ; Federal Public Services and Public Service Commission ; the Imperial Library and the Indian Museum ; the Benares Hindu University and the Aligarh Muslim University ; survey of India ; ancient and historical monuments ; census ; federal railways ; maritime shipping and navigation ; major ports ; aircraft and air navigation ; light-houses ; copyright and inventions ; cheques and bills of exchange ; arms, fire-arms and ammunitions ; explosives ; opium ; petroleum ; development of industries ; labour in mines and oil-fields ; insurance ; banking ; customs duties ; excise duties on tobacco and other goods manufactured or produced in India except alcoholic liquors, Indian hemp and other narcotic drugs and medicinal and toilet preparations ; corporation tax ; salt ; state lotteries ; income-tax ; taxes on capital ; concession duties ; terminal taxes ; taxes on railway fares and

Lastly These are subjects essential and vital for the existence of derogate from and concern India as a whole. It is necessary that India. The <sup>nd</sup> be a uniform policy with regard to them.

Subjects which are essentially of a provincial nature, i. e., which concern the Provinces more than the Federation and about which there need be no uniformity of treatment throughout the whole country were included in the Provincial List. The Provincial Legislatures had exclusive jurisdiction over them. Under normal circumstances the Federal Legislature could not legislate upon any of them, though in cases of emergency it might do so with the previous sanction of the Governor General. The Provincial List contained 54 subjects, the more important of which are the following: public order and administration of justice, constitution of all courts except the Federal Court; police, prisons and reformatories; public debt of the Province; Provincial Public Services and Provincial Public Service Commission; pensions; land acquisition; provincial libraries, museums, etc.; provincial elections; local self-government; public health and sanitation; hospitals, dispensaries, and registration of births and deaths; education; communications; irrigation and canals; agriculture; land tenure and agricultural loans; weights and measures; development of industries in the province; trade and commerce within the province; unemployment and poor relief; theatres and cinemas; co-operation; land revenue; excise duties on alcoholic liquors for human consumption, opium, and medicinal preparations; taxes on agricultural income; taxes on land and building; succession duties in respect to agricultural land; capitation taxes, taxes on professions, trades and employment; taxes on advertisements and sale of goods; taxes on animals; taxes on luxuries, entertainments, betting, gambling etc.; and tolls. An amendment of the Act added taxes on the consumption or sale of electricity, and Universities except those of Benares and Aligarh to the list.

The Concurrent List contained in all 26 subjects arranged in two parts. The following are some of the more important items of part I of the List: criminal law; criminal procedure; civil procedure; evidence and oath; marriage and divorce and adoption; transfer of property and registration of deeds and documents; wills, intestacy and succession; trusts and trustees; contracts; bankruptcy and insolvency; non-judicial stamp duties; legal, medical and other professions; newspapers, books and printing presses; poisons and dangerous drugs; mechanically propelled vehicles; boilers; European

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vagary and criminal tribes. The following were included in part II: factories ; welfare of labour, provident fund for labour, unemployment insurance ; trade unions ; industrial and labour disputes ; electricity ; inland shipping and navigation ; detention of persons under federal authority ; and sanctioning of cinematograph films for exhibition.

The Concurrent List contains subjects which are essentially of provincial interest but require a uniform policy and treatment throughout India. Both the Federal and the Provincial Legislatures were competent to legislate on them ; the latter could vary the federal legislation to suit their varying requirements.

The student must clearly understand that a clear-cut distinction between subjects which are to be administered by the federal government and those which are to be administered by the governments of the federating units is indispensable for a federal constitution. No party can make any alteration in the scheme of distribution as sanctioned by the constitution ; changes can be effected only by a constitutional amendment. No party can invade the sphere of the other ; the governments of the units cannot legislate upon federal subjects and the federal legislature cannot deal with any provincial or state subject. Though under the Act of 1919 also a distinction was made between central and provincial subjects, it had nothing of a federal character about it ; the central legislature had the right to make laws about a subject which was classed as provincial, and a provincial legislature could similarly legislate for its own territory on any subject even though it was classed as central. The statutory allocation of exclusive powers to the federal and provincial legislatures under the Act of 1935 thus stands in sharp contrast with the legislative relations between the centre and the provinces under the Act of 1919.

**Salient Features of the Indian Federal Scheme.**—The federal constitution outlined in the Government of India Act of 1935 has many features which distinguish it from other federal constitutions. Most of them are due to the fact that impulse and motive toward federation came not from the people but from an external source—the British Government. 'The Federation in India is the result partly of the political evolution of British India, partly of the desire of the States to play a part in the constitutional progress of the country.'

and to get their rights in relation to the Paramount Power definitely clarified and defined, and mostly of the anxiety of the British Government to secure steadyng, stabilising and conservative element before granting some responsibility at the Centre.\* It will be recalled that nationalist India had been agitating for long for responsible government at the Centre, and that the Act of 1919 did not concede any responsibility there. The British Government refused to commit itself to the proposition that the R. T. C. was being convened for the purpose of framing a Dominion constitution for India. This led the Congress to stay away from its first session and launch the struggle for Swaraj. The intensity and volume of the sufferings undergone voluntarily and cheerfully by the people in their non-violent campaigns for freedom might have led the British Government to the conviction that the transfer of power to the people in the government of India could not long be delayed. But, as has been pointed out earlier, what really produced a great change in the attitude of British statesmen towards Central Responsibility and made them think of it as within the range of practical politics and not as some distant and far-off ideal, was the willingness of the Indian Princes to join the proposed Indian Federation. The former at once realised that the association of the Princes with the Federation would furnish to the Government at the Centre a much needed stabilising and conservative factor. With a strong bloc representing the Princes in the federal legislature, British interests would be pretty safe and secure, and power could be transferred to the people without much misgiving. This enables us to understand the British insistence on the establishment of the Federation as a condition precedent to the grant of central responsibility and the accession of a number of States to the Federation before it could become a fact.

This also explains another prominent feature of the Indian Federation. Whereas other federations have been the result of a process of uniting thitherto independent states, in our country the creation of Federation meant the breaking up or splitting up of the unitary British India into autonomous provinces and then uniting them with such Indian States as might care to join. Though politically India was divided into two different parts, economically

\* Joshi : *The New Constitution of India*, page 91.

and for purposes of defence and foreign relations she had long been one single unit. None of the purposes which have normally led to federalising elsewhere were present in this case, and the motives which were operative here have had no precedents in the world. The proposed Indian Federation was unique in this respect.

It had several other distinguishing traits. Its units were not of the same status and character. British Indian Provinces enjoyed a measure of democratic government ; their citizens had many civic and political rights and would have elected their representatives in the federal legislature, directly to the one and indirectly to the other chamber. The Indian States had nothing by way of democratic government, in them more or less undiluted personal rule prevailed. Their citizens did not enjoy the same civic and political rights, and were not to have any share in the choice of the representatives of the States in the federal legislature. In the Indian Federation two or three dissimilar types of units were sought to be united.

The Indian Federation was to be brought into existence by the Crown. It was not to come into existence as the result of any agreement or contract between the federating units themselves. The British Indian Provinces or their people were not to determine what States were to be admitted into the union and on what conditions. All this was to be settled by the Crown. It should also be noted that whereas the range of federal powers was the same in regard to British Indian Provinces, it would not have been the same in case of the States acceding to the Federation. Nothing like it was found in any other federation. We have already drawn attention to the fact that the scheme of distribution of powers between the federal government and the governments of the units had no parallel in the world.

The political dependence of India accounted for some other features of the proposed scheme. The process of amending the federal constitution was made very rigid and complex. The power was vested in the British Parliament. In some most important and vital matters the States which would have joined it could have put serious difficulties by not agreeing to the proposed amendments. The relation of the States to the Paramount Power remained outside the Federation. They were to have direct dealings with the Crown, a right denied to the British Indian Provinces.

The constitution outlined in the Government of India Act was the longest and the most complex constitution in the world. The Act had 321 sections and ten schedules. Some of its provisions did not deal with problems really constitutional but with questions of an administrative character; e. g., sections dealing with commercial safeguards, provisions against discrimination, constitution of the Reserve Bank and the Federal Railway Authority. There were other features also but they related to subordinate problems; e. g., the constitution of the Chambers. They shall be referred to at appropriate places.

**Establishment of the Federation.**— The Government of India Act of 1935 did not establish the Indian Federation; it merely contained a provision for it. It provided that the Federation of India was to be brought into existence by a Royal Proclamation. Before His Majesty could make the Proclamation, two conditions were to be fulfilled. An address in that behalf was to be presented to the King by each House of Parliament; and such an address could be presented only when Rulers of States representing not less than one-half of the total population of the States and entitled to not less than half of the seats allotted to the States in the upper chamber of the Federal Legislature, i. e., 52 seats, had signified their assent to join the Federation. The establishment of the Federation was thus made dependent upon the consent of a requisite number of States to join it. Since, for various reasons, the requisite number of States did not agree to join the Federation, it did not come into existence.

The Act provided that, pending the establishment of the Federation, the Central Government and Legislature would continue as constituted under the Act of 1919, with such change as might be necessitated by the changed conditions. In other words, the Central Government was to remain a purely official government under the control of the Secretary of State. But two notable changes were made. First: the relations of the Crown with the Indian States no longer remained the concern of the Government of India; they were to be conducted by the Crown Representative. This new functionary (the Governor General was made the Crown Representative) was to deal with the Princes through the agency of the Political Department. Second, the relations between the Central Government

and the Provinces were to be conducted on a purely federal basis. The provincial governments were given the largest measure of autonomy in managing the provincial subjects. The Central Government dealt with the federal subjects only.

It is natural to ask why it was that the Indian Princes showed great reluctance to join the Federation. It was generally expected at the close of the R. T. C. that the requisite number of them would accede to it within an year or two. This expectation, however, did not materialise. By way of explanation it has been suggested that when the Indian Provinces declared at the first session of the R. T. C. their willingness to join the Federation, they did not fully realise all the implications of their step, particularly, its consequences on their sovereignty. Despite the very generous concessions the Act made to their claims, they did not look upon it with favour; they were more anxious to preserve their own autonomy than to see the unity of India realised in a federal polity. 'The question that agitated them was not whether federation would enable them to contribute to the benefit of India as a whole, but whether their own position would be better and safer inside the federation than outside.\* The question of paramountcy could not be solved to their satisfaction; and the exact terms on which the accession to the Federation was to be made could not be settled. Meanwhile, the war started in Europe and the whole question was put in cold storage.

There was wide and universal condemnation of the Act of 1935 in the country. The Indian National Congress, the Muslim League and other parties were all hostile to it, though for different reasons. Even the Liberals criticised the limitations it imposed on self-government, though they were for working it. The Congress seriously objected to the reservations and safeguards which rendered the transfer of power to the people almost meaningless. There was no element of growth or development in the system. Congress also found it difficult to reconcile itself to the idea that the representatives of the States should be nominated by their rulers. The Congress attitude towards the Act is well-expressed in the following extract from Pandit Jawahar Lal Nehru's *Discovery of India*. Writing about the Act of 1935 he says that it 'provided for some kind of provincial

\* V. P. Menon: *Integration of the Indian States*, page 36.

autonomy and a federal structure, but there were so many reservations and checks that both political and economic power continued to be concentrated in the hands of the British Government. Indeed in some ways it confirmed and enlarged the powers of an executive responsible solely to that Government. The federal structure was so envisaged as to make any real advance impossible ..... Thus, reactionary as this structure was, there were not even any seeds in it of self-growth ..... The Act strengthened the alliance between the Government and the princes, landlords, and other reactionary elements in India ..... it retained in British hands complete control over Indian finance, military and foreign affairs ; it made the Viceroy even more powerful than he had been.\*

The League too denounced the safeguards as taking away from the reality of responsible government, but was prepared to work the provincial part. Inspite of this opposition and the unwillingness of the Princes, the British Government could have brought the Federation into existence, if it were so minded. It could have persuaded sufficient number of Princes to accede to it, had it so desired. But it wanted to wait and watch the way in which provincial autonomy worked before entrusting power to the people's representatives at the Centre. The War in Europe and the developments in India altered the situation, and the federal scheme was dropped. So while effect was given to that part of the Act which dealt with provincial autonomy, etc., the Centre remained as it was constituted under the Act of 1919, responsible to Parliament and not to the people.†

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\* *Discovery of India*, page 350.

† The various forces which led to the dropping of the federal scheme are thus stated by Menon : 'The underlying concept of an all-India federation was to preserve the essential unity of the country. But it is sad to reflect that in the clash of politics, the struggle for power, the wrangle for ascendancy and the scramble for gains on the part of the political organisations, politicians and the Princes, the scheme of federation became a tragic casualty. The Congress condemned it for reasons mostly divorced from facts and realities but largely under the pressure of a strong left wing. Jinnah and the other leaders of the Muslim League, embittered by the controversy on the issue of coalition ministries, now began to play with the idea of a separate State, and turned against the conception of an all-India federation. The Indian Princes, regardful only of their own parochial interest, made extravagant claims impossible of acceptance. But the final death-blow was given to it by the outbreak of the second World War which did not give time to its sponsors to stage even a decent burial.'

**Accession of the States to the Federation.**— Since the actualisation of the Federal scheme was made dependent upon the States entering the Federation, we may at this stage conveniently study the procedure by which the accession could be effected. According to Section 6, the Ruler of State who wanted to join the Federation had to execute what is called an 'Instrument of Accession'. Therein he was to declare his willingness to accede to the Federation, and to bind himself and his heirs and successors to accept the authority of the Governor General, the Federal Legislature, the Federal Court or any other Federal Authority to exercise such functions in relation to his State as may be vested in them by the Act. The Federal Authority could be exercised only for the purposes of the Federation and with regard to such subjects only as were to be enumerated in the Instrument of Accession. The range of Federal power could be enlarged but not restricted by a subsequent instrument duly executed. The Instrument of Accession was to be accepted by His Majesty in order to be valid. The King could reject any Instrument if it was not in proper form. The Joint Parliamentary Committee suggested that all the Instruments of Accession should be similar in form, though the list of subjects accepted as Federal by States might not be identical in all the cases. The Rulers of Indian States and His Majesty's Government were not able to come to any agreement about the language of the Instrument and the conditions on which the former were to federate, though they were the subject of discussion for several long years.

It is interesting to observe that, while the States desirous of joining the Federation were given the freedom to choose the subjects the power to legislate concerning which they were to surrender to the Federal Legislature, no such liberty was conceded to the British India Provinces which were made units of the Federation compulsorily.

It may also be stated in passing that the Federal Legislature was to have nothing to do with the accession of the States for the first twenty years after the establishment of the Federation. After that period all requests for accession were to be sent through the Governor General who would not forward any of them to the King unless an address was presented by both the Chambers to the King that the State may be admitted.

## THE FEDERAL GOVERNMENT

**Introductory.**— The Federation of India was to consist of the eleven Governor's Provinces, six Chief Commissioner's Provinces and such Indian States as might have given their assent to accede to it. The following were the Governor's Provinces: Bombay, Bengal, Madras, Assam, Bihar, Orissa, the Central Provinces, the United Provinces, the Punjab, the N. W. F. Province, and Sind. Burma was separated from India. Sind and Orissa were separated from the provinces of which they formed parts under the Act of 1919, and made into independent units. Delhi, Ajmere-Merwara, Coorg, British Baluchistan, Panth-Piploda and Andaman and Nicobar Islands were the six Chief Commissioner's Provinces. All of these provinces were to be members of the proposed Federation compulsorily. The Indian States were given option to accede to it at their will.

The executive authority of the Federation was vested in the Governor General as the representative of the King. The legislative authority was vested in the Governor General as the representative of the Crown and two chambers known as the House of Assembly and the Council of State. For the interpretation and protection of the Constitution and the adjudication of disputes between the Federation and its units or between the units themselves, provision was made for the establishment of a Federal Court. For the administration of Federal Railways the Act provided for the creation of a statutory body known as the Federal Railway Authority; and for the maintenance of the financial stability of the Federation, the control of currency and credit, and the issue of bank-notes the establishment of a Reserve Bank was made an indispensable condition of the Federation coming into existence. The Reserve Bank started its operations in 1935, and the Federal Court came into existence on October 1, 1937. The other federal organs never came into existence. We shall describe their composition, powers and functions briefly.

## THE FEDERAL EXECUTIVE

**The Governor General.**— The executive power and authority of the Federation was to be exercised by the Governor General on behalf of His Majesty either directly or through officers subordinate to him. It covered (a) all matters with respect to which the Federal Legislature had the power to make laws, (b) the raising in British India on behalf of the Crown of naval, military and air forces and

the governance of His Majesty's forces whose expenses were met out of Indian revenues, and (c) the exercise of rights possessed by treaty, usage or any other lawful means in relation to tribal areas. The executive authority did not extend in any province to matters with respect to which the Provincial Legislature had the power to make laws, save as expressly provided in the Act. In the States it extended only to those matters in respect of which the Federal Legislature was given the power to make laws by the Instrument of Accession and in so far only as it was not reserved to the State concerned. It should be remembered that the executive authority of every State even with regard to subjects coming within the scope of the Federal Legislature remained unless it was expressly excluded by the Instrument of Accession. Here is another difference between the States and the Provinces of British India so far as the scope of the Federal Executive authority was concerned.

It should be observed that as a result and with the establishment of provincial autonomy the scope of the executive authority of the Government of India over the Provincial Government was very much diminished. Unless some special responsibility of the Governor General was involved, he was not to interfere in the administration of the subjects included in the Provincial List. This stands in sharp contrast to what prevailed under the Act of 1919.

Besides being the head of the civil administration, the Governor General had also the supreme command of the military, naval and air forces in India. But this command was rather nominal; the real authority lay with the Commander-in-Chief who was appointed by His Majesty and exercised such functions in relation to the armed forces of the Federation as were assigned to him.

In addition to the executive authority and power vested in him by the Constitution as the Head of the Federal Executive, the Governor General also exercised such prerogative powers of the Crown as His Majesty granted to him, provided they were not inconsistent with the Act; e.g., the powers of conferring decorations and honours and the grant of commissions in the Indian Army. It may also be added that the office of the Governor General as the representative of the Crown in relation to the Federation was distinct from the office of His Majesty's representative as Viceroy

in relation to the States ; and it was open to His Majesty to appoint two persons to hold these two high offices or to give charge of both to one person only. Both the offices were held by one and the same individual till the end of British rule in India.

The Governor General was appointed by the King on the advice of the Prime Minister on an annual salary of Rs. 250,800. He also received a number of allowances fixed by the King-in-Council. The total amount the country was required to spend on him came to about eighteen lakhs a year. No other official in the world received such a high salary and allowances. During his absence on leave the Acting Governor General received the same salary and allowances as the Governor General. All these sums were a charge on Indian revenues ; they were exempt from the vote of the Legislature.

**Different Modes of Exercising Executive Authority.—** Under the Act of 1919 the entire executive authority of the Government of India was vested in the Governor General-in-Council who was responsible to the Secretary of State and not to the Legislature. It could be exercised in one way only. But under the Act of 1935 the conditions were to be different. Some power had to be transferred to the people and some retained in British hands. The executive authority of the Federation vested in the Governor General was therefore to be exercised in ways more than one. In matters which were transferred to the people's representatives, the Governor General had to act in one way ; in regard to others which were reserved to him, he was to act in a different way. The entire field of federal government was thus divided into two parts : one was the sphere of ministerial responsibility, and the other was reserved to the Governor General. Four of the federal subjects, namely, foreign relations, defence, ecclesiastical affairs and tribal areas were to be administered by the Governor General himself. For their administration he was responsible to the Secretary of State ; he was not constitutionally bound to consult his ministers. They could not legally complain, if he ignored their existence. Since it is impossible for a single individual to administer such important and big departments, the Act allowed the Governor General to appoint not more than three Counsellors to help and advise him in their administration. The salaries and conditions of

service of the Counsellors were to be laid down by the King-in-Council. Each one of the Counsellors was to be an *ex-officio* member of both the chambers of the Federal Legislature to represent his department. He was to have the right to take full part in debates but not the right to vote. The Instrument of Instructions to be issued to every Governor General at the time of his appointment was to direct him to consult his Council of Ministers in the administration of the Defence department. In the administration of the four reserved departments the Governor General was said to act *in his discretion*. There were other important and vital matters also where he was entitled to act *in his discretion*. Some of them will be enumerated later on. The Governor General was said to act *in his discretion* when he took decision on his own responsibility and was not required by law to consult his ministers. In other words, the sphere where he was to act *in his discretion* lay outside the scope of ministerial responsibility. Whenever he was to act thus, the Governor General was responsible to the Secretary of State and through him to the British Parliament.

**Council of Ministers.**— The remaining federal subjects were to be administered by the Governor General with the help and advice of his Council of Ministers. The Council of Ministers was to contain not more than ten persons. The Ministers were to be chosen and appointed by the Governor General; they were to hold office during his pleasure and could be dismissed by him at his discretion. The Instrument of Instructions prescribed the manner in which the Governor General was to appoint his Council of Ministers. He was to appoint them in consultation with a person who was most likely to have a stable majority in the House of Assembly; *i.e.*, in the same way in which the King of England chooses his Cabinet. Though neither the Act nor the Instrument of Instructions directly made mention of the office of Prime Minister or Premier, the person who has the leader of the majority group in the House of Assembly and on whose advice the Council of Ministers was to be selected—was to function as one. The Governor General was also directed by the Instrument of Instructions to encourage the spirit of collective responsibility of the Council of Ministers and also to include in it members of important minority communities and the representatives of the states. As to how these two seemingly inconsistent

requirements were to be fulfilled, the Instrument was silent. The Ministers would naturally have been appointed from among the members of both the Houses of the Federal Legislature. A minister was to cease to hold office if for a consecutive period of six months he was not a member of either House of the Legislature. The salaries of the Ministers were to be determined by an Act of the Legislature and were not to be varied during their tenure of office. This meant that the Legislature was deprived of the valuable right of proposing a cut in the salary of a Minister as a motion of no-confidence in him. The salaries were not to be annually voted. Nevertheless, the ministers were responsible to and removable by the Legislature. Unlike the Executive Councillors under the Act of 1919 and the Counsellors under the Act of 1935, they were to answer for their policies and actions before the Legislature. They were bound to give effect to the declared wish of the Legislature in the administration of the departments subject to their control. According to the letter of the law it was the duty of the Governor General to allocate the portfolios among them, but in actual practice it was expected that it would be done by the Prime Minister. The Governor General could preside at the meetings of his Council of Ministers in his discretion.

As far as the administration of the transferred subjects was concerned, the Governor General was legally bound to consult his Ministers, but in certain cases where he had special responsibilities, the Act empowered him to dissent from their advice and act as he thought proper. In such a case he was said to act *in his individual judgment*. The Act gave him the power to act in his individual judgment in some 32 cases. The distinction between the Governor General acting *in his discretion* and the Governor General acting *in his individual judgment* must be clearly understood. When he was to act in his discretion he need not have consulted the Ministers; such matters lay outside the field of ministerial responsibility. Where he was empowered to act in his individual judgment, he was required by law to consult his Ministers but was not bound to accept their advice. These subjects lay within the area of ministerial responsibility but constituted the special responsibilities of the Governor General. In the rest of the administrative field where he had neither discretionary powers nor special responsibilities, he was

to act on the advice of the Council of Ministers.

We may thus distinguish three different ways in which the Governor General was to exercise the authority vested in him as the head of the civil administration. He could (i) act in his discretion, (ii) exercise his individual judgment, and (iii) act on the advice of the popular ministers. It is only in matters where the administrative action was taken on the advice of responsible ministers that popular government may be said to have been conceded. In so far as the Governor General used his discretion or exercised his individual judgment there was no transfer of power to the people. In order to determine the degree and extent of responsible government in the Federal sphere we must therefore know when and where the Governor General could act independently of his Ministers or overrule them.

**Discretionary Powers of the Governor General.**— There are no less than 94 different sections of the Act which make a mention of the power of Governor General to act in his discretion. It is not necessary to refer to all of them; we shall mention the more important items and add a few words by way of comment.

1. Administration of the Defence Department, Foreign relations excluding relations with the Dominions, Ecclesiastical Department, and Tribal Areas. These were the four reserved subjects. The first two are the most vital and important. There could be no real Swaraj or self-government without the control of the people's representatives over *defence* and *foreign relations*. To say nothing of popular control over these vital subjects, the Ministers would have got little opportunity to influence the military and foreign policy of the federal government. All that was conceded to the people was that the Instrument of Instructions directed the Governor General to encourage joint consultation between the Ministers and the Counsellors. In view of the inclusion of a similar provision in the Instrument of Instructions to the Provincial Governors under the Act of 1919 and its neglect by them, no hopes could be built on this provision.

2. Choosing, summoning, and dismissal of Ministers. The way in which the late Mr. Allah Bux, the Premier of Sind, was dismissed by the Governor of Sind, even though he had the support of a majority in the legislature, invests the power to dismiss a Minister

with great significance.

3. Presiding at meetings of the Council of Ministers.

4. Appointment of the Counsellors, Financial Adviser and his staff and the determination of their salaries, allowances and conditions of service, the appointment of the Chief Commissioners; the appointment and the removal of the Governor and the Deputy Governor of the Reserve Bank and the approval of their salaries and allowances; the appointment of 3/7 of the members of the Federal Railway Authority and the President thereof, the appointment of a panel to form a Railway Tribunal and the selection of persons to constitute the Tribunal; the appointment of the President of the Railway Tribunal, of the Directors and Deputy Directors of Indian Railway Companies, of temporary and additional Judges of High Courts and of the Officiating Chief Justice; the appointment of the Chairman and members of the Federal Public Service Commission and the determination of their salaries, tenure of office and conditions of service.

One may understand that the Ministers may not be consulted in the appointment of Counsellors since they were to be responsible to the Governor General, but the taking away of political patronage from their hands and leaving the power to appoint so many high officials to the Governor General cannot be defended on rational grounds. It simply meant concentration of power in the Governor General.

5. Making of rules for (i) the convenient transaction of governmental business and the distribution of work among the Ministers, (ii) keeping the Governor General informed, and (iii) the authentication of the orders and instruments of the Government. The value and importance of this rule making power can be best understood from the fact that its exercise was one of the reasons which led to the domination of the Governor General over his Executive Council. He had also the power to make regulations necessitating consultation with the Public Service Commission regarding appointment to federal posts. He also made regulations for the peace and good government of British Baluchistan, Andaman and Nicobar Islands.

6. The various powers conferred on him in connection with the legislature, e. g., of summoning, proroguing its sessions and dissolv-

ing the lower House, sending messages regarding Bill, summoning of the joint meetings of the two Houses, disallowing the introduction of certain Bills and the refusal of assent to Bills passed by it or reserving them for His Majesty's pleasure, and the giving of previous sanction for the introduction of certain Bills.

7. The work of legislation ; i. e., the enacting of Governor General's Acts, promulgation of ordinances.

8. Issuing of emergency Proclamation, suspending the constitution and assuming specified powers to himself, issuing instructions to Governors for promulgating ordinances, control over and issuing directions to Governors acting in their discretion or exercising individual judgment.

The list is illustrative only and not exhaustive. It is, however, sufficient to reveal the extent of the real power vested in the Governor General.

**Special Responsibilities and other powers of the Governor General.**— Within the ministerial field the Governor General had certain special responsibilities in the discharge of which he could ignore the advice given by his Council of Ministers and act in his individual judgment. They constituted a special feature of the 1935 constitution. They were necessitated by the transfer of power to the people. The Act laid down the following special responsibilities of the Governor General :—

1. Prevention of any grave menace to the peace or tranquillity of India or any part thereof.

2. The safeguarding of the financial stability and credit of the Federal Government.

3. The safeguarding of the legitimate interests of the minorities.

4. The securing to, and to the dependents of, persons who are or have been members of the public services, of any rights provided or preserved for them by or under the Act and the safeguarding of their legitimate interests.

5. Prevention of commercial discrimination in the sphere of executive action.

6. Prevention of action which would subject goods of the

United Kingdom or Burmese origin imported in India to discriminatory or penal treatment.

7. Protection of the rights of any Indian State and the rights and dignity of the Ruler thereof.

8. The securing that the due discharge of his functions with respect to matters regarding which he is by or under this Act required to act in his discretion or to exercise his individual judgment is not prejudiced or impeded by any course of action taken with respect to any other matter.

We shall add a few words about these special responsibilities. Indian opinion took strong objection to them on the ground that they 'remove the most considerable part of governmental routine from the hands of the responsible popular Ministers.\* They were calculated to strengthen the executive independence and thus militated against the development of responsible government. They prevented the Governor General from becoming the constitutional head with respect to the transferred subjects. They were also very vague and ill-defined and provided to a reactionary and autocratic Governor General a handle to thwart national progress. As Dr. Sir Shafat Ahmad Khan remarks in his volume on Indian Federation, 'the field of special responsibility permeates the whole administration, and it is difficult to suggest any subject ..... in which it may not emerge any moment'. They represented safeguards against the risk to British interests involved in the transfer of political power to the people.

Law and order was one of the departments under the control of a responsible minister. But the special responsibility of the Governor General for the prevention of any grave menace to the peace and tranquillity of India or any part thereof gave him the power to take any steps he liked to combat terroristic activities, revolutionary plans, and civil disobedience movements irrespective of the wishes of the Councils of Ministers. Not only that, under cover of it he could overrule any measure proposed to be adopted by any other branch of administration, if he considered it to be ill-advised and likely to be a menace to the peace and tranquillity of any part of India; e. g., the proposal to declare Jan. 26 a public

\* K. T. Shah: *Federal Structure*, pages 160-61.

holiday or a measure to abolish permanent settlement or change the system of land tenure.

Finance was also one of the transferred departments under the control of a popular minister. British vested interests apprehended danger to themselves from the financial policies a nationalist finance minister might adopt. There were also the Home Charges and the Public Debt of India against which there had been some talk in India. All these required to be safeguarded against any inroads nationalist forces might have made. Hence the Governor General was charged with the special responsibility of safeguarding the financial stability and credit of the Federal Government. To assist him in the discharge of this very vital responsibility, he was to appoint a Financial Adviser whose staff, salary and conditions of service were to be determined by him acting in his discretion. He was to hold office during his pleasure. The Financial Adviser would have been available to the Federal Government for consultation in financial matters. Except in the appointment of the first Adviser, the Governor General was to consult his Minister as to the person to be selected for the post.

The responsibility for safeguarding the legitimate interests of the minorities does not call for any comment except that it was inserted in order to satisfy the minorities and allay their fears that the majority community may not act in an arbitrary and tyrannical manner. The responsibility for protecting the interests of the Public Services was also introduced for a similar reason. But it is far more important than the other ; it had the effect of placing the members of the Services beyond the control of the ministers under whom they were to serve and whose policies and decisions they had to carry out.

India was held by the Britishers as one of the best markets for British manufactured goods and for the investment of British capital, as well as a source for the supply of raw material. British trading and commercial interests were much afraid that a self-governing India would adopt measures which would injure their trade and investments. Responsibility for the prevention of discrimination against such measures was included as a sop to them.

The responsibility mentioned last of all simply means that the Governor General was authorised to take steps to ensure that no action taken by any department will impede the discharge of his

special responsibilities. In addition to the above-mentioned special responsibilities there were other occasions also where the Governor General was to exercise his individual judgment; e. g., promulgating ordinances under special emergencies, nominating and removing the directors of the Reserve Bank of India, making of rules for the convenient transaction of business between the Federal Government and the Federal Railway Authority, and appointing the High Commissioner for India and determining his salary and conditions of service.

**Summary.**— It would thus appear that the Governor General was not meant to be merely a constitutional head even in regard to the administration of the *transferred* subjects. He was expected to exercise an influence on their administration, both legitimate and constitutional, to an extent to which it is difficult to find an analogy in the constitution of any democratic country in the world. He was to be the pivot of administration. It is interesting to note that the Council of Ministers did not form part of the 'government'; all executive authority was vested in the Governor General and was to be exercised in his name. The ministers had no authority to issue orders or take formal decisions; technically their function was merely to advise the Governor General. It may also be pointed out that there was no legal provision for enforcing the responsibility of the ministers to the legislature. They held office during the pleasure of the Governor General, and even their salaries could not be altered during their tenure of office. Ministerial responsibility was to develop as a result of conventions.

The Governor General had vast administrative, legislative and financial powers. It is not necessary to describe them in any detail; they were involved in the exercise of his discretionary powers and the right to act in his individual judgment. Mention may however be made of the extraordinary powers of legislation given to him by the Act. They were of two kinds. He could enact what were known as Governor General's Acts without consulting—nay, even in opposition to the wishes of—the Legislature. If he thought that for the purpose of discharging satisfactorily his functions in respect of matters where he had to act in his discretion or exercise his individual judgment some legislation was necessary, he could, in a message, explain the circumstances to the Legislature and enact a Governor

General's Act embodying the necessary provisions. If he liked, he could send a draft of the Act to the Legislature and consider any suggestions the latter might make. It was, however, not necessary to do so. Secondly, he had the power to issue Ordinances. These again were of two kinds. If the Legislature was not in session and an emergent situation arose requiring immediate action, he could promulgate an ordinance on the advice of his Ministers. If necessary, he could exercise his individual judgment in such a case. Such an ordinance was to have all the force of law, but was to be placed before the Legislature, and was to cease to have effect if it were not passed by it within six weeks of the commencement of the session. The Governor General had also the power to promulgate an ordinance *at any time* with regard to subjects coming within his discretion and special responsibilities. Such an ordinance could not remain in force for more than six months at a time but could be renewed for a further period of six months by another ordinance. The fact of such an extension was to be communicated to the Secretary of State who was required to place it before both the Houses of Parliament.

These legislative powers of the Governor General had no parallel in democratic states. They were, however, necessitated by the special responsibilities and powers given to the Governor General in administration.

**Advocate General.**— Provision was also made for the appointment of an Advocate General for the Federation. He was to be appointed by the Governor General acting in his individual judgment. His remuneration was to be determined in like manner. His qualifications were to be those of a judge of the Federal Court. It was to be his duty to advise the Federal Legislature in legal matters and perform such other functions as might have been assigned to him by the Governor General. He was not expected to have any political affiliations with the Ministry. He had the right to address both the Houses of Legislature and held office during the pleasure of the Governor General.

**The Instrument of Instructions.**— A few words may be added about the Instrument of Instructions which was a document of great importance. It was through it that the elements of responsible government were sought to be introduced in the Federal Govern-

ment and in the Provincial Governments as well. It should be remembered that in the Government of India Act of 1935 there was not a word about the principle of collective responsibility of the Council of Ministers, or about the requirement that they should enjoy the confidence of the legislature. In laying down that the Governor General should appoint his Ministers in consultation with a person who was most likely to have a stable majority in the Legislature and that he should foster the spirit of joint responsibility, the Instrument introduced responsible government. It also directed the Governor General to include representatives of important minority communities and the States, and contained instructions as to the manner in which he was to exercise his special powers and discharge his special responsibilities. It also directed him to consult his Ministers in matters pertaining to the defence of the country and the Indianisation of the Army or the employment of Indian troops abroad. It is thus clear that the Instrument of Instructions was to be made the vehicle of the development of responsible government in the country.

It was to be issued by the King to the Governor General at the time of his appointment. Its draft was to be prepared by the Secretary of State and was to be laid before Parliament. No further action could be taken unless an address was presented to His Majesty by both the Houses praying that the Instrument be issued. The same procedure had to be gone through in issuing a subsequent Instrument modifying, amending or revoking the provisions of an Instrument previously issued. Parliamentary approval of the Instrument was thus made indispensable. This practice stands in sharp contrast with that adopted in issuing Instruments of Instructions to the Governors General of the Dominion.

Although the Instrument possessed great constitutional significance and importance, it could not be legally enforced through a court of law. No legal notice could be taken of any action on the ground that it was inconsistent with its provisions. The validity of the appointment of interim minority ministries by the Governors which did not enjoy the confidence of the majority party in various provincial legislatures could not thus be called into question. If the Governor General failed to encourage the spirit of joint responsibility, or appointed his Council of Ministers otherwise than was

provided for in the Instrument, the people of India had no remedy. The Instrument was thus highly defective as a weapon of evolving responsible government.

**Safeguards.**— The foregoing description of the discretionary powers and special responsibilities of the Governor General should make the nature of the *Safeguards* clear. The safeguards constituted as vital a feature of the Act as the proposal to transfer power to the people. Without the former, the latter could not have been feasible.

The idea of safeguards was first suggested by the Simon Commission. It was accepted by the R. T. C. at its first session. Sir Tej Bahadur Sapru said : 'Provide as many safeguards as you can so long as these safeguards do not destroy the vital principle, and then go ahead with courage and with faith.' Mahatmaji had also accepted the principle of safeguards when he agreed to proceed to London to participate in the second session of the R. T. C., on the distinct understanding that they were to be devised in the interests of India. But in the form in which they were actually incorporated in the Act of 1935 they were designed to protect the interests of British Imperialism and its allies, and not to promote the Indian interests. They had their root in the distrust of Indians and the desire to exploit the communal problem to further British imperial interests. "As the Indian Princes are opposed to democracy and the Muslims to majority rule, our British rulers find it a fine opportunity to exploit their fears for their own ends. The 'safeguards' are thus intended to safeguard the interests of these three parties— the British, the Muslims and the Indian Princes. From the point of view of the British, the All-India Federation is the biggest safeguard for the continuance of their connection with India for all time to come. The Federal Centre is so devised as to make it impossible for the extremists to get control of it."\*

### THE FEDERAL LEGISLATURE

**Introductory.**— The Act of 1935 provided for the establishment of a Federal Legislature consisting of His Majesty, the King, represented by the Governor General, and two houses to be known as the Council of State and the House of Assembly. The institution

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\* Punniah : op. cit., page 319.

of a bicameral legislature was not an innovation; the Central Legislature was constituted on this basis under the Act of 1919. A federal constitution also envisages a bicameral legislature; one house represents the units of the federation and the other the people or the nation. What was new was the association of King with the legislature in a direct manner. No reasons were assigned for the change. It was not important.

**The Council of State.**— The upper chamber which was to represent the federating units and was to be known as the Council of State was to consist of 156 representatives of British India and *not more than 104* representatives of Indian States. The actual number of the representatives of the States at any time was to depend upon the number of States acceding to the Federation. It could not however be less than 52; for otherwise the federation could not have been brought into existence. The total number of seats was distributed among the various States in accordance with their relative rank and importance as indicated by their dynastic salute and other factors. Thus Hyderabad was given five seats; Mysore, Kashmere, Gwalior and Baroda three each; and Travancore, Cochin, Udaipur, etc., two each. It is not necessary to enter into details.

The representatives of the States were to be nominated by their rulers. The Act did not lay down that the people should be consulted by the Rulers of the States in the choice of representatives. Though theoretically possible, such consultation was not at all to be expected. Representatives nominated by the ruling Princes were expected to serve the interests of their masters and to become the tools of the Paramount power. This was the reason why Indian public opinion was much against this provision of the Act. Of the 156 representatives assigned to British India 150 were to be elected by the citizens on a communal basis, and six were to be nominated by the Governor General in his discretion in order to secure the representation of women, minorities and the Depressed classes. Into the details of the distribution of the seats among the provinces and the various communities in each province it is not necessary to go. But it should be borne in mind that the units of the Federation were not equally represented in it. In this respect it differed radically from the American Senate and the Swiss Council of States.

General seats, and the seats reserved for Muslims and Sikhs were to be filled by direct election, while those reserved for Europeans, Anglo-Indians, Christians were to be filled by indirect election. The members representing each one of these communities in the various provincial legislatures were to form an electoral college for the choice of the representatives of that community. Scheduled class representatives were also to be elected in the same indirect manner. All the members of a provincial legislature, men and women, were to be electors for filling the seat reserved for women from that province. Though the franchise was not determined, it was expected to be based on high property qualifications. The Council of State was bound to be a highly plutocratic and aristocratic body. It was to be a permanent body, not liable to dissolution at any time, like the American Senate. One third of its members were to retire every three years. Members were to be elected for a nine-year term. In its permanent tenure it differed from the Council of States as constituted under the Act of 1919.

**The House of Assembly.**— It was to be the lower house of the Federal Legislature, and was to represent the people of India. It was to consist of 260 representatives of British Indian Provinces and not more than 125 representatives of Indian States. As in the Council, the representatives of Indian States were to be nominated by the rulers; they were not to be elected by the people of the States. The representatives of British India were divided among the various provinces and in each province among the various communities and interests. For purposes of representation the following constituencies were recognised: General, 105 (inclusive of 19 seats for Scheduled Classes and representing Hindus, Parsees and such other communities as did not seek the right of separate communal representation); Scheduled Classes, 19 (as under the Poona Agreement); Muslim, 82; Sikh, 6; Indian Christian, 8; European, 8; Anglo-Indian, 4; Commerce and Industry, 11; Landholder, 7; Labour, 10. Women, too, were given nine seats. In short, the Act of 1935 carried the vicious principle of communal representation very much further than was done by the Act of 1919. The New Constitution has abolished the system. The seats assigned to the Indian States were distributed among them. Hyderabad had 16 seats, Mysore 7, Travancore 5, etc. Details are unnecessary.

The Assembly was to be constituted for a five-year term (under the Act of 1919 it was a three-year term); it could, however, be dissolved before the expiry of its term by the Governor General. Though the Assembly was to represent the nation (as distinguished from the units of the federation), it was to be constituted *indirectly*. It was a very curious provision; nowhere in the world is the popular house indirectly constituted. It was suggested by the Simon Commission. Sir Samuel Hoare advanced some arguments in support of the scheme of indirect election into which it is not necessary to go. Another important point to be borne in mind about the composition of both the houses was the abolition of the bloc of nominated official and non-official members except for the presence of six members who were to be nominated by the Governor General to the Council of State. It would be remembered that it was the presence of a sufficiently large bloc of official and nominated non-official members in the provincial legislatures under the Act of 1919 which prevented the true spirit of ministerial responsibility from developing under Dyarchy. Much, however, must not be made of this point; the representatives of the Indian States who were to be the nominees of the ruling Princes would have played almost the same role in the Federal Legislature as was played by the official and nominated non-officials in the older set-up. In this connection it should also be remembered that the States were over-represented in both the chambers. In the council they had more than 40 % of the seats, and in the Assembly 33½ %, whereas their population was about 24% of the total population of India. This excessive representation becomes all the more significant and objectionable when it is remembered that the States' representatives were to be the nominees of the ruling chiefs. The presence of this large bloc of nominees of the States and the method of indirect election to the Assembly made the House undemocratic in character. It is interesting to note that the Hindus who constituted more than 70 % of the population of British India were given only 105 seats (inclusive of 19 seats reserved for the Scheduled classes), while the Muslims, Sikhs, Europeans, Indian Christians, and Anglo-Indians who formed less than 30 % of the total population were also given the same number of seats. 28 seats were held by the representatives of Landlords, Commerce and Industry, and Labour. The Hindus were thus reduced to a minority in the Assembly as a whole. The Europeans and Anglo-Indians were given

highly excessive representation. This peculiar composition of the Assembly was perhaps the greatest safeguard of vested British interest. It may also be noted in passing that the distribution of seats among the provinces of British India was not made on the basis of population. Bengal, Madras and the U. P. got the same number of seats, i. e. 37 each, though there was considerable difference in their population which was 50·1, 44·2, and 48·4 millions respectively. Bombay with only 18·2 millions got away with 30 seats, while C. P. with its 15·5 millions was given fifteen only.

The adoption of indirect election for constituting the House of Assembly was one of the weakest points of the federal scheme as outlined in the Act. It would have seriously retarded the growth of national unity and patriotism, for issues concerning India as a whole would not have come up before the masses who would have been concerned only with provincial problems. Instead of developing a national outlook, they would have been generally led to view things and problems from a provincial point of view. Elections would have been fought on provincial issues, and federal issues would have suffered. This objection against indirect election was very forcefully put before the House of Commons by Sir Herbert Samuel who spoke as follows : 'The Indians want their country to be one unit. They want their country to be visibly one great nation. The main achievement of British rule during the last two centuries has been that for the first time it has created a united India in some degree. That is an unchallengeable achievement of the British connection, which is welcomed by Indians of all shades of opinion . . . they want an Assembly which will represent India as such. This is not a measure which will secure the representation as such of a united, a single India, a great nation standing visibly one and indivisible in the face of the whole world. It will be merely a collection of representatives of ten or twelve different provinces. That is what the Indians do not desire, and that is the chief underlying reason why the Central Legislature should be directly created by an all-India electorate and should be chosen on all-India issues.' In the second place, it would have made the dissolution of the Federal Assembly a useless thing for the solution of differences between it and the Federal Government. There would have been no public opinion to which either the members or the Government could appeal. Each members would

have some six or seven persons of the provincial legislature who elected him and who would have again sent him back. Dissolution of the Assembly would have thus become perfectly futile. There was also some danger that the system would create corruption.

The arguments against indirect election were weighty ; those in favour of it were unconvincing. The proposal to constitute the Upper House on a direct basis and the Lower House on an indirect basis had no precedent in the world ; it was contrary to all principles and traditions. Progressive Indian opinion demanded a reversal to the practice of direct election to the Lower House.

Since elections to the House of Assembly were to be indirect, the question of franchise did not arise. The Assembly was to have a tenure of five years, but could be dissolved earlier by the Governor General. He could not, however, extend its life. It was empowered to elect one of its members as the Speaker and another as the Deputy Speaker. The Speaker was to preside at its meetings and perform the usual duties of the presiding officer of a legislature. He was not to vote in the first instance but could have given his casting vote in case of an equality of votes. He could at any time resign his office by writing to the Governor General to that effect, and could be removed from office by a vote of the Assembly. Similar remarks apply to the presiding officer of the Council of State who was to be known as the President.

**Qualifications and Privileges of Members.**— No one could be a member of both the Houses. No one could be a member of either Chamber of the Federal Legislature and of a Chamber of a Provincial Legislature. Persons holding an office of profit under the Crown in India, or who were declared to be of unsound mind by a court, or were undischarged insolvents, or were convicted of any offence or corrupt practice relating to elections, or had been sentenced to transportation or imprisonment for not less than two years and provided five years had not elapsed since their release, were not eligible for membership of the Federal Legislature. A member of the Council of State could not be less than thirty years and that of the House of Assembly not less than 25 years of age. No one could be chosen a member of either Chamber who was undergoing a sentence of imprisonment or transportation for a criminal offence. A member would have lost his seat if he had failed to lodge a return

of his election expenses.

Every member of either Chamber had to take an oath of allegiance to the King before taking his seat. The members were assured of freedom of speech, subject to the rules and regulations of the Chamber to which they might have belonged. No member was liable to any proceeding for anything said in the House or a vote given there. They were to receive such salaries and allowances as might be determined from time to time by an Act of the Legislature. Other privileges were to be such as might be defined by an Act of the Legislature.

**Powers of the Legislature.**— The powers and functions of the Federal Legislature may best be discussed under four heads : legislation, deliberation on and formation of national policies, finance and control over administration, and enforcement of ministerial responsibility.

(a) *Legislative Powers.*— The Federal Legislature was given exclusive powers to make laws on all the subjects mentioned in the Federal List for the whole of British India or any part thereof, and for the Federating States on such subjects as were specified in the Instruments of Accession and to the extent to which the Princes federating might have agreed. It could also make laws for all British subjects domiciled in any part of India, and also for ships and aircraft registered in British India or any Federated State and for persons on them. No provincial legislature was authorised to legislate on any subject named in the Federal List.

The Federal Legislature was also empowered to legislate on subjects stated in the Concurrent List. This power was not exclusive ; the Provincial Legislatures also had the right to make laws on them. Under ordinary circumstances it had no authority to legislate on subjects included in the Provincial List. But in an emergency whereby the security of India was threatened, whether by war or internal disturbance, or where two or more Provinces by mutual consent requested it, the Federal Legislature could legislate even for the Provinces on a Provincial subject. This power of superseding the Provincial Legislature could be exercised only with the previous sanction of the Governor General given in his discretion. It should always be borne in mind that all legislatures in British India were non-sovereign legislative bodies ; their powers to

make laws were restricted in several ways.

(b) *Formation of National Policy.*— The terms of the Constitution did not expressly provide for the exercise of this power by the Federal Legislature. It was however implied in its power to move and discuss resolutions on important matters, discuss and pass the budget, and enforce responsibility on the ministers. The Central Legislature as constituted under the Act of 1919 also had this power. But, as has been pointed out in an earlier chapter, its resolutions, etc., were not binding on the executive; they were merely recommendatory in nature. Under the Act of 1935 they would have been mandatory; the ministers could disregard them only on pain of a vote of no-confidence. Of course, if they touched upon the sphere where the Governor General was authorised to use his discretion or exercise his individual judgment, they were nothing more than mere recommendations to which the executive might or might not pay heed.

(c) *Financial Powers.*— The extent to which a legislature can influence the formation of national policies and enforce responsibility upon the executive depends upon its financial powers. 'He who controls the purse controls the administration.' In order to determine the degree to which the Act transferred political power from the Bureaucracy to the people of India, one must have a precise knowledge of the financial powers of the Federal Legislature under it.

It was the duty of the Governor General to get prepared every year a statement of the estimated receipts and expenditure of the Federation for the following year— it was to be called the 'Annual Financial Statement'— and cause it to be placed before both the Chambers of the Federal Legislature. The Statement was to show clearly (i) the sums required to meet expenditure charged upon the revenues of the Federation, (ii) the sums required to meet other expenditure proposed to be made from the revenues of the Federation, and (iii) the sums, if any, which were included solely because the Governor General had directed their inclusion as being necessary for the due discharge of any of his special responsibilities. The distinction between (i) and (ii) was very important and fundamental, and must be grasped fully. Under class (i) were included all those items of expenditure which did not require any vote of the Legislature; they were a charge upon federal revenues. The Governor

General could authorise expenditure on them without any reference to his Council of Ministers or to the Legislature. They covered about 75 to 80 % of the total expenditure. They were as follows :

(a) The salary and allowances of the Governor General and other expenditure relating to his office for which provision was required to be made by an Order-in-Council.

(b) Debt charges for which the Federation was liable, including interest, sinking fund charges and redemption charges, other expenses relating to the raising of loans and the service and redemption of debt.

(c) Salaries and allowances of Ministers, Counsellors, the Financial Adviser, the Advocate General, Chief Commissioners, and of the staff of the Financial Adviser.

(d) The salaries, allowances and pensions payable to or in respect of the judges of the Federal Court, and pensions payable to or in respect of the judges of any High Court.

(e) Expenditure for the discharge by the Governor General of his functions with respect to the reserved subjects, namely, defence, foreign relations, tribal areas, and ecclesiastical affairs.

(f) The sums payable to His Majesty under the Act out of the revenues of the Federation in respect of expenses incurred in discharging the functions of the Crown in relation to the Indian States.

(g) Any grant connected with the administration of excluded areas in any Province.

(h) Any sums required to satisfy and judgment decree or award of any court or arbitral tribunal.

(i) Any other expenditure declared by an Act of the Federal Legislature to be so charged.

Whether or not any proposed demand for a grant fell under the non-votable head was to be decided by the Governor General in his discretion, and his decision was final.

Though these items were not subject to the vote of the Legislature, it was at liberty to discuss any of them excepting the salary and allowances of the Governor General, and the sums, payable to His Majesty under (f) above.

Expenditure on items included in (ii) was subject to the vote of the Legislature; it could not be incurred by the executive unless it was sanctioned by the former. It came to about 20 to 25 % of the total expenditure. Even in this limited sphere the control of the Legislature was not complete. It was open to the Governor General to include in the authenticated schedule of authorised expenditure any demand for grant that might have been reduced or refused by the Assembly, if it appeared to him necessary for the proper discharge of any of his special responsibilities. It would thus appear that the financial powers of the Federal Legislature were highly circumscribed. The existence of expensive departments like those of defence and foreign relations which were wholly removed from ministerial control and the power of the Governor General to sanction expenditure where his special responsibilities were involved put serious limitations on the power of voting supplies possessed by the Legislature.

For a better understanding of the powers of the Legislature as well as those of the Governor General in regard to federal finance it is necessary to know the procedure in financial matters. The first step, as has been already hinted, was the submission of the Annual Financial Statement showing the estimated income and expenditure for the following year to both the Houses. No priority or pre-eminence was accorded to the House of Assembly over the Council of State in this respect. Both the Houses then proceeded with a general discussion of the Budget as a whole. This gave to each of the Chambers an opportunity to review the administration in general, criticise the policies pursued by the Government in various departments and voice national grievances. It should be remembered that the Chambers were free to discuss all items of expenditure which were a charge upon federal revenues except the salary and allowances of the Governor General and expenditure in respect of the State. The general discussion constituted the second stage of the financial procedure. The third stage commenced when the various demands for grants were first submitted to the Assembly for its vote. It is hardly necessary to remind the reader that only about 20 to 25 % of the total expenditure was subject to the Assembly's vote, the rest was a charge upon the federal revenues. The Assembly could either assent or refuse to assent to a demand for grant or reduce it; it

could not increase it. It could not propose any expenditure. It is in accordance with a sound principle of public finance that no demand for grant can be made except on the recommendation of the Governor General, and private members are debarred from proposing fresh expenditure. After the House of Assembly had voted upon each of the demands, as many of them as might have been passed by it or passed by it in a reduced form, were to be placed before the Council of State for its vote. In other words, the Act of 1935 gave the Upper Chamber an equal right to vote supplies. The only privilege enjoyed by the Lower House was that the demands for grants were in the first instance submitted to it, and if a grant was refused by it, it could not be placed before the Upper House unless the Governor General otherwise directed. If it reduced a grant, the reduced grant had to be put before the Council of State unless the Governor General directed that the original grant be put before it. The Act of 1935 thus introduced two innovations ; it conferred equal powers of voting supplies upon the Council of State, and permitted the Governor General to override the House of Assembly, if it reduced or refused a grant.

If the two Chambers disagreed about any demand for grant, i.e., if one House refused a grant which the other passed, or reduced it by an amount not acceptable to the other, the Governor General had to call a Joint Session of the two Houses to decide the matter. The composition of the Chambers was such that in a great majority of cases the will of the Governor General would have prevailed. He could count upon the support of the State Representatives, who numbered about 229, the representatives of landlords, Europeans, Anglo-Indians and Commerce and Industry, who numbered about 40 in both the Houses, and also upon the votes of the communalists and the nominated members. The chances of popular will prevailing in the joint session were small indeed. After the two Houses had finished voting upon the grants, either singly or jointly, the Budget entered upon the fourth and last stage. The Governor General authenticated by his signature a schedule specifying the grants made by the Chambers and the sums charged upon the Federal revenues. While authenticating the schedule, he had the right to restore a grant refused by the Chambers or to restore a grant to its original figure which might have been reduced by them, if in

his opinion such a refusal or reduction would have affected the due discharge of any of his special responsibilities. The authenticated schedule was to be placed before the two Houses but was not open for discussion or voting thereon. It constituted the legal authority for expenditure during the year. If in any financial year additional expenditure became necessary, a supplementary budget had to be passed and the same procedure had to be gone through.

One other point deserves notice. The previous practice was that after the various demands for grants had been considered and passed by the Legislature, a Finance Bill was prepared and presented before the Assembly for its acceptance. On many occasions the Assembly rejected the Bill as a protest against the policy of the Government. According to the new financial procedure the authenticated schedule would have taken the place of the finance bill, and it would have been beyond the power of the Legislature to discuss, vote upon or reject it.

In several respects the new proposals were reactionary and unwelcome. The Council of State which was to be highly conservative in its composition was given almost equal powers with the House of Assembly in the sphere of finance. Above both, there was the power of the Governor General to restore any cuts or refusals made by the Legislature. Professor K. T. Shah sums up the financial position in the following words: 'Summing up the financial powers of the Legislature, we cannot but recognize that the field of finance open to the Legislature is strictly limited. Even in the limited field every attempt is made to drown or neutralise the voice of the chosen representatives of the people in the Lower House. At every stage in the course of the passage of the annual budget through the Federal Legislature, the Governor General is given powers of intervention, suggestion, and dictation. The last word rests with the Governor General, and his word shall prevail, even after the combined vote of the two Chambers of the National Legislature has decided a case against the suggestion of the Governor General. As finance is the keystone of the arch of responsible Government, these restrictions on the authority and powers of the Federal Legislature in matters of finance tell their own tale of suspicion and distrust of the Indian politician, of a grim resolve of the British Imperialist elements to keep India subject and an undiminished field for their

exploitation.\*

The other part of the Annual Financial Statement, namely the estimated income for the year, need not detain us long. It contained the taxation proposals of the Government and other ways and means of providing revenues. No proposal for taxation or borrowing could come before the House except on the recommendation of the Governor General. All that the Legislature could do was to accept the proposals, refuse them or reduce the amount of a tax ; it could not increase any tax or propose a new one. After having been passed by the Assembly, it was sent up before the Council of State. No proposal for imposing a tax could be moved in the Council of State at the first instance ; all such measures were to originate in the House of Assembly.

From the preceding discussion it will be clear that the initiative as well as the last word in financial matters rested with the Executive. In Great Britain also the initiative lies with the executive, but the final authority is Parliament. The Act gave co-ordinate and equal powers in financial matters to the two Chambers (except that financial bills could not originate in the Council of State) which is also contrary to the British practice according to which the House of Lords has no financial powers. This was a highly retrograde step to which Indian opinion was very much opposed.

(d) *Control over Administration.*— It was not directly provided for in the Act but was implied in the power of granting or withholding supplies, the right to move resolutions on matters of general policy, motions of adjournment, and ask questions, granted to the Legislature by it. But for a detailed supervision of, and control over, the administration committees of different types appointed by the Chambers are the most important and useful. As the Legislature never came into existence, no committee system could develop.

**Relation between the Two Chambers.**— The Act of 1935 gave to the Council of State and the House of Assembly equal and coordinate powers in legislation and finance except as regards the initiation of finance bills which could originate only in the Assembly. Both the chambers possessed equal and co-ordinate powers in legislation in so far as (i) any measure (other than finance bill) could

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\* *Federal Structure* pages. 322—23.

originate in either house, and (ii) no bill could be presented to the Governor General unless it was passed by both the chambers in exactly the same form. If one of them passed a bill which was rejected by the other or passed by it with amendments which were not acceptable to the other, it lapsed; it could not be sent to the Governor General for his assent. Differences between the two houses could be removed at a joint sitting called by the Governor General. Decisions were to be arrived at by a majority of votes of members of both the Houses present and voting. Whereas under the Act of 1919 the Council of State had no right to grant supplies, the Act of 1935 conferred this power upon the upper chamber. All demands for grants were first to be submitted to the Assembly, and next to the Council in the form in which they were passed by the Assembly, unless the Governor General directed otherwise in his discretion. In other words, the Governor General could appeal to the Council of State against the decision of the Assembly. Disagreements between the two could be removed in a joint session. It may be pointed out that the Governor General had the power of restoring any grant reduced or rejected by both the chambers if he thought such a course necessary for the due discharge of any of his special responsibilities.

It would thus appear that the plutocratic and oligarchic Council of State, 40 % of whose members were to be nominees of the Rulers of Indian States, was to be one of the strongest second chambers in the world, almost as strong *vis-a-vis* the lower house as the American Senate like which it was to be a permanent and indissoluble body. The creation of an upper chamber, at once highly conservative and oligarchic and very powerful, was one of the noteworthy features of the Act of 1935 which had hardly any parallel in the world. It was on a par with its novel proposal of a directly elected and indissoluble upper chamber and an indirectly elected, dissoluble and popular lower chamber. It is also important to remember that the Council could criticise the work of the Council of Ministers, ventilate public grievances through interpellations, motions of adjournment, etc. It was expected to play an important role in the making and unmaking of the federal ministry along with the lower house.

**The Governor General and the Legislature.— The Act**

vested the Governor General with great powers not only of legislation but also powers over the Legislature. Reference to the former has already been made. He could enact Governor General's Acts and promulgate Ordinances over the head of the Legislature. These were extraordinary powers of legislation which are absolutely inconsistent with the principles of democracy, and are nowhere to be found in democratic states. But in countries having the parliamentary form of government the executive head is generally given some powers over the legislature. The Governor General of India was however vested with powers in relation to the Federal Legislature far in excess of those enjoyed, for example, by the King of England or the President of the French Republic. The more important of them are the following :

1. He could summon the Legislature to meet, prorogue its sessions, and dissolve the House of Assembly before the expiry of its term of five years. He was bound to call at least one session every year, and was not to allow twelve months to elapse without calling a meeting.
2. He could make rules regarding the disqualifications of members and was empowered to remove them in individual cases.
3. He could require the attendance of members to hear his address, and could call joint sittings of the two Houses under certain circumstances.
4. He had the power to make rules of procedure for regulating the business before either Chamber in respect of matters coming within his discretionary powers and the exercise of individual judgment ; e. g., the timely completion of financial business.
5. He could prohibit the discussion or the asking of questions on any matter (i) connected with Indian States other than those with respect to which the Federal Legislature had power to make laws, (ii) pertaining to the relations of His Majesty or the Governor General with any foreign power or Indian State, (iii) connected with the affairs of a Province, or (iv) dealing with the personal conduct of the Ruler of an Indian State or of a member of the ruling family thereof.
6. His previous sanction given in the discretion was necessary for the introduction of legislation which (i) repealed, amended, or was repugnant to the provision of any Act of Parliament extending

to British India, (ii) repealed, amended or was repugnant to any Governor General's Act or an Ordinance promulgated by him, (iii) affected matters in which he was authorised to act in his discretion, (iv) affected, repealed, or amended any Act relating to the police force, (v) affected the procedure laid down for the trial of Europeans in criminal cases, (vi) subjected persons not residing in British India or companies not wholly managed in British India to greater taxation than persons resident in India or companies wholly controlled and managed in British India, (vii) affected the grant of relief from any Federal tax on income taxed or taxable in the United Kingdom, (viii) affected the coinage or currency, or the constitution and functions of the Reserve Bank of India, or (ix) which aimed at prescribing professional qualifications. It should also be remembered that no measure which imposed a tax or proposed a fresh expenditure could come before the legislature except on the recommendation of the Governor General.

7. He could recommend certain classes of Bills to the Legislature and demand that his recommendations be accepted by it. Finance Bills and measures pertaining to the administration of the reserved subjects came under this head.

8. He could direct that no proceedings or further proceedings were to be taken in relation to a Bill, clause, or amendment to a clause in a Bill which in his judgment affected the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof.

9. He had the power to assent to, withhold assent from, or reserve a Bill passed by the Legislature for His Majesty's pleasure. He could also return a Bill to the Legislature with the message that the Bill as a whole or some particular provisions of it may be reconsidered.

**Restrictions on the Powers of the Legislature.**— The Federal Legislature was not a sovereign legislative body; there existed several limitations on its law-making powers. In the first place, it had no constituent powers; it could not alter, amend, or repeal the Government of India Act or any of its provisions. The right to determine the constitution of India was expressly reserved to itself by the British Parliament. In the second place, there were certain topics on which it was debarred from legislating; e. g., matters affecting the Sovereign, succession to the Crown, Army Act, Air Force

Act, and Naval Discipline Act. Thirdly, there were subjects legislation on which could be introduced with the previous sanction of the Governor General given in his discretion. They have been enumerated above. Fourthly, as has been stated in a foregoing section, the Governor General and the King had the power to disallow Bills passed by it. There were bills of a certain character which the Governor General was constitutionally required to reserve for the signification of His Majesty's pleasure, e. g., a Bill which derogated from the powers of a High Court in British India, a Bill passed by a Provincial Legislature which affected and altered the character of Permanent Settlement. Provisions of the Act dealing with discrimination against British trading and commercial interests are also of the nature of restrictions imposed on the legislative powers of the Federal Legislature.

These limitations on the legislative competence of the Federal Legislature existed because it was a *subordinate* law-making agency to which the British Parliament had given certain definite powers of legislation by the Government of India Act. The British Parliament reserved to itself the right not only to determine the Indian constitution but also to legislate for India.

**Provision in case of Failure of Constitutional Machinery.—**

It now remains to mention another very important power vested in the Governor General by the Act. It relates to the failure of the constitutional machinery set up by the Act. If an occasion arose (similar to what happened in some of the Provinces in 1939 when the Congress Ministers resigned as the British Government had failed to state their war aims in a way satisfactory to Indian public opinion and an alternative government could not be formed) when the Governor General was satisfied that the Government of the Federation could not be carried on in accordance with the provisions of the Act, he could issue a Proclamation suspending the constitution in whole or in part and declaring that his functions to such extent as was specified in the proclamation would be exercised in his discretion, and may assume to himself all or any of the powers vested in or exercisable by any Federal body or authority other than the Federal Court. This proclamation was to be communicated to the Secretary of State, who would place it before Parliament. It could remain in force only for a period of six months

unless both the Houses of Parliament approved of its continuation for a further period of twelve months. A Proclamation suspending the constitution could be revoked by a subsequent proclamation.

The Government of the Federation by means of such proclamations could not be carried on for more than three years. At the end of three years the government was to be conducted in accordance with such changes and amendments as might have been made by Parliament. In some Provinces, however, government by means of proclamation was carried on for more than the stated period of three years.

The provision for government by Proclamation in the event of a breakdown of constitutional machinery is most undemocratic. Nothing like it exist in the constitutional law and practice of Great Britain or of any other democratic state. In England if a Ministry is defeated, the King has to find an alternative government or dissolve parliament and issue instructions for holding general elections. The appeal is thus made to the electorate which may renew its confidence in the outgoing government or instal another party in power. In India the Governor General, instead of giving the people a chance to approve or condemn the action of the ministry, could suspend the legislature and take into his hands its powers and those of other federal bodies. Government by proclamation is nothing but autocratic and dictatorial rule. The purpose of this provision was to prevent the Legislature from forcing the hands of the Governor General into a line of conduct which he did not think proper. It was not designed to restore harmony between the legislature and the executive by an appeal to the electorate.

#### THE FEDERAL COURT

**Necessity of a Federal Court.**—A federal constitution essentially involves the distribution of governmental functions between the government of the federation and the governments of the federating units. Each has a clearly demarcated sphere of its own which it cannot transgress. A federal constitution also postulates the supremacy of the written constitution. No party is permitted to violate its provisions. Any executive act or legislative measure of either the federal government or the government of a unit which goes against it, is null and void. A supreme court is needed to interpret

the constitution and decide upon the legality or otherwise of the acts and measures of the various governments as well as to decide the disputes about jurisdiction which are likely to arise in a federation. We thus find that there is no federal polity in the world but has its supreme judicial organ. The Government of India Act also provided for the establishment of a Federal Court. Though the Federation was never formed, the Federal Court was brought into existence and began functioning on October 1, 1937.

**Its Constitution.**— The Federal Court was to consist of a Chief Justice and not more than six other judges. The number of judges could be increased if the Federal Legislature presented an address to His Majesty through the Governor General asking for an increase. At the time of its establishment it consisted of a Chief Justice and two other judges. The judges were appointed by His Majesty. Their salaries were fixed by His Majesty in Council and could not be changed to their disadvantage during their tenure. They were a charge on Indian revenues. The Judges had permanency of tenure ; they could not be removed from office before the attainment of the age of sixtyfive years, except by His Majesty on the ground of misbehaviour, or of infirmity of mind or body, if the the Judicial Committee of the Privy Council, on reference being made to them, reported that a judge ought to be removed on any such ground. Good salary and permanency of tenure were necessary to secure judicial independence. Temporary vacancies could be filled by the Governor General.

The Federal Legislature and the Government of the Federation were not given any voice or power in the appointment or removal of judges of the Federal Court, ostensibly with a view to keeping them outside the play of party politics and securing their independence and integrity of judgment. Indian opinion was strongly critical of placing the appointment, etc., of judges in the hands of an outside authority, namely, the Secretary of State for India. It was feared that 'so long as the judges owe their allegiance, primarily and obviously, to an outside authority unconsciously biased in favour of the existing order, they cannot but,— quite unconsciously perhaps,— lean in favour of the class or power that give them their place, and their importance in the scheme of life..... Hence the supposed attribute of impartiality induced or encouraged

by this method of appointing Judges to the highest tribunal in India would fail to accomplish the object in view ; while there is at least an equal danger of its promoting something quite the reverse.\*

**Qualifications of Judges.**— In order to be eligible for appointment as a judge of the Federal Court a person must have been for at least five years a judge of a High Court in British India or in a Federated State, or a barrister of England or Northern Ireland of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of at least ten years' standing, or pleader of a High Court in British India or in a Federated State of at least ten years' standing. The Chief Justice must, at the time of his appointment, be a barrister, an advocate or a pleader of at least fifteen years' standing. The effect of this provision was to exclude members of the Indian Civil Service from appointment as the Chief Justice. The Governor General could appoint any one of the federal judges to act as the Chief Justice in a temporary vacancy.

The Federal Court was a court of record ; i. e., its proceedings and judgments were officially recorded and published and cited as authority before subordinate courts. It normally sat at Delhi. The salaries, allowances and pensions of the judges were fixed by the King-in-Council. They were a charge upon the federal revenues.

**Jurisdiction of the Court.**— The Federal Court had a three-fold jurisdiction : original, appellate, and advisory. It had exclusive original jurisdiction in the case of disputes about legal rights between the Federation and any of its units. In other words, the parties to the suit must be Governments and not individuals, and the dispute must involve a question of legal right. On its original side the Court could declare what were the rights of the parties to the suit.

On its appellate side it heard appeals from High Courts in British India and Federated States, if the latter certified that the case involved a substantial question of law as to interpretation of the Act or an Order-in-Council made under it. The Act did not confer appellate jurisdiction on the Federal Court in Civil and criminal cases. Provision was however made by which the Federal Legislature could pass an Act with the previous sanction of the Governor

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\* K. T. Shah, *Federal Structure*, page 389.

General enlarging its appellate jurisdiction so as to entertain appeals in civil cases from High Courts, provided the amount involved was not less than Rs. 50,000. Direct appeal to the Privy Council would have ceased if effect were given to this provision.

If the Governor General desired any information on any point of law that had arisen or was likely to arise, he could in his discretion refer the matter to the Federal Court and request it to give its opinion. The Court was to sit as an open court in considering the matter and give its opinion. This was the advisory or consultative jurisdiction of the Court. It is not certain whether this opinion was binding upon the Governor General.

It may be added that the Federal Court always sat as a bench and delivered its judgments as an open court with the concurrence of a majority of judges in case of difference of opinion among them. A dissenting judge was entitled to give his dissenting judgment. All proceedings in the Court were to be in English.

The Federal Court made its own rules of procedure. The law declared by it was binding on, and was to be followed by, all courts in British India. All authorities, civil and judicial, throughout the Federation were to act in aid of the Federal Court.

The Federal Court was not the supreme court. Appeals from its judgments could lie to the Judicial Committee of the Privy Council without leave from it in cases which (i) involved an interpretation of the Act or an Order-in-Council and the judgment was given in the exercise of its original jurisdiction, (ii) concerned the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of a State, or (iii) arose from agreement made between the Federation and any Federating State in relation to the administration in the State of a law made by the Federal Legislature. In other cases appeals lay by leave of the Federal Court.

The Federal Court, which began functioning on October 1, 1937, did excellent work as the interpreter and defender of the Constitution for about a dozen years, until its conversion into the Supreme Court under the new Constitution. During the Second World War it defended and safeguarded the civil liberties of the people against the arbitrary acts of the Executive. In a case regarding the validity of a rule made by the Government of India under the Defence of India Act, the Federal Court declared it *ultra vires*.

Sir Maurice Gwyer, the first Chief Justice of the Federal Court, lived up to the principles which he enunciated while inaugurating it. He declared : 'Independent of Governments and Parties, the Court's primary duty is to interpret the Constitution. It would be its endeavour to look at the Constitution, not with the cold eyes of an anatomist, but as a living and breathing organism which contains within itself, as all life must, the seeds of future growth and development. Its canons of interpretation would not hamper the free evolution of those constitutional changes for which the law provided no sanction, but in which the political genius of a people can find its most fruitful expression.'

### THE FEDERAL RAILWAY AUTHORITY

**Introductory.**— Railways in India constituted a federal subject and were not included in the list of the reserved subjects which were to be administered by the Governor General in his discretion. But neither did they come under the control of a popular minister. Whereas under the Act of 1919 Railways were managed by a Railway Board which was under the control of the Member of the Viceroy's Executive Council in-charge of Communications, and the Railway budget was presented separately by the Communication Member to the Central Legislature which could discuss it and vote a part of its grants, the Act of 1935 vested their control and management in a new authority created by it. It was to be free from control by the Council of Ministers and the Federal Legislature except as regards general policy to some extent and the safety of passengers. This authority was to be known as the Federal Railway Authority. Provision for its establishment was included in the Act presumably to satisfy the foreign bond-holders of Indian Railways that their investments would be secure against interference by Indian politicians and the possibility of uneconomical and wasteful management. Distrust of Indians is thus writ large on the creation of the Railway Authority. Its composition, powers and functions were defined in the Act, and the Federal Legislature was debarred from changing them in any manner. Even for other matters the previous sanction of the Governor General was necessary. Since it never came into existence and nothing like it exists in our present constitution, nothing need be added about its composition, powers, etc.

## FEDERAL FINANCE

A federal polity requires not only the distribution of powers between the government of the Federation and the governments of the federating units, it also equally demands a statutory division of the sources of income between the two. The heads of revenue allocated by the Act of 1935 to the Federal Government are enumerated in the Federal Legislative List. The following were the more important of them : Customs duties ; excise duties on goods produced in the country except liquors, opium, narcotic drugs, and medicinal toilet preparations containing alcohol ; corporation tax ; tax on salt ; taxes on income other than agricultural income ; taxes on capital ; duties in respect of succession to property other than agricultural land ; stamp duty in respect of bills of exchange, cheques, promissory notes, insurance policies, etc. ; terminal taxes on goods or passengers carried by railway or air ; and taxes on railway freights and fares. The proceeds of duties in respect of succession to property other than agricultural land, stamp duties on bills of exchange, etc., terminal taxes on goods or passengers carried by rail or air, and taxes on railway freights and fares in any financial year, though levied and collected by the Federal Government, were assigned to the Provinces and States and distributed among them in accordance with an Act of the Legislature. They did not form part of federal revenues. A certain percentage of revenue from income-tax was also assigned to the Provinces. Duties on salt, federal excise duties, and export duties were levied and collected by the Federal Government ; but if an Act of the Federal Legislature so desired, a part or whole of their proceeds could be paid to the provinces and federated states from where they were collected. Surcharge on all duties levied by the Federal Government was to be credited to it.

**Reserve Bank of India.**— Finance was a transferred subject to be controlled by a popular minister, but the preservation of the financial stability and credit of the Federal Government was one of the special responsibilities of the Governor General. The financial system of a country is closely linked up with its currency and exchange, and with a view to safeguarding its security it was necessary to ensure control over the latter. Hence the White Paper recommended that as a condition precedent to the inauguration of the Federation a Reserve Bank be established which must be entrust-

ed with the task of controlling currency and credit, issuing bank-notes and maintaining reserves. The Reserve Bank of India Act was passed by the Indian Legislature in 1934 and the Bank started functioning in 1935.

Its affairs were managed and controlled by a Central Board of Directors composed of a Governor and two deputy Governors appointed by the Governor General-in-Council, four directors nominated by the same authority, eight directors elected by the shareholders, and a Government official nominated by the Government of India. No bill affecting the constitution and functions of the Reserve Bank or the coinage and currency of the country could be introduced in the legislature without the previous consent of the Governor General given in his discretion.

In the appointment and removal of the Governor and Deputy Governors of the Reserve Bank and in determining their terms of office and remuneration, in superseding the Board of Directors, and in the matter of the liquidation of the Bank, nomination and removal of the directors, the Governor General was to act in his discretion. The Reserve Bank has now been nationalised.

**Borrowing etc.**— The Act also made detailed provisions with regard to borrowing into which it is not necessary to enter. It also provided for the appointment of an Auditor General who was to perform such duties and exercise such powers in relation to the accounts of the Federation and the Provinces as might have been prescribed by an Order of His Majesty-in-Council or by an Act of the Federal Legislature. He was to be appointed by the King and was removable by him. His salary, allowances, and pension and those of his staff were a charge on the Federal revenues.

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## CHAPTER XII

### THE GOVERNMENT OF INDIA ACT, 1935 (*Contd.*)

#### PROVINCIAL AUTONOMY AND HOME GOVERNMENT

**Introductory.**— It has been pointed out in the preceding chapter that the eleven Governors' Provinces, six Chief Commissioners' Provinces, and such Indian States as would have executed the Instrument of Accession were to be the units of the proposed Indian Federation. The Indian States were to retain the form of government which prevailed in them; the Act of 1935 could not legislate for them, and it did not demand that they should democratised their administration. It proposed no change in the government of the Chief Commissioners' Provinces also; they were to be administered by the Governor General through his agents, the Chief Commissioners, who were to be appointed by him in his discretion. They were not to be given the privileges of self-government. It is only in the Governors' Provinces that full responsible government—limited, of course, by the discretionary power and special responsibilities of the Governor—was to be introduced. In this chapter we shall describe the provisions of the Act so far as they related to the Governors' Provinces.

**Provincial Autonomy.**— Perhaps the greatest and most fundamental of the changes introduced by the Act of 1935 was the new status assigned to the Governors' Provinces. Though each of them had an executive and a legislature of its own under the Act of 1919, they were mere territorial divisions exercising merely delegated authority. They had no independent status and existence of their own; the executive in each one of them was the agent of the Governor General-in-Council, responsible to him, and bound to carry out all orders and instructions which might be issued by him. This was the natural consequence of the unitary system of government then prevalent in the country.

The Act of 1935 changed all this. It made the provinces autonomous political units. They ceased to be mere territorial divisions enjoying whatever authority was delegated to them by the Government of India; they now derived their power and authority direct

from the Crown. This was a fundamental departure from the principle and practice of the Act of 1919. By describing them as *autonomous* units it is meant that each of them was to have 'an Executive and a Legislature having exclusive authority within the Province in a precisely defined sphere, and in that exclusively provincial sphere, broadly free from control by the Central Government and the Legislature.' Provincial autonomy thus signified that the provincial executive and legislature were free from the control of and dependence on the Government of India in the administration of matters enumerated in the Provincial Legislative List. Such freedom could not be absolute ; everywhere the Federal Government has some control over the governments of the units. Under the Act of 1935 the degree of control exercised by the Governor General over the provincial governments was much larger than anywhere else in the world. This is the reason why in the above-quoted definition of *autonomy* given by the Joint Parliamentary Committee the phrase 'broadly free' occurs. In this definition there is no reference whatsoever to the responsibility of the provincial executive to the legislature. It laid stress only on one element in the meaning of provincial autonomy ; namely, freedom from the control and interference of the Government of India. In this sense the Indian States were autonomous units ; and so were the provinces during the Governor's regime under Section 93 of the Act. Neither in the States nor in the Provinces so long as they were governed under Section 93, was there any iota of responsible government. This means that autonomy can exist without responsible government ; though the latter cannot exist without the former. It is not 'provincial autonomy' in this narrower meaning which was established by the Act of 1935, but in the wider meaning which includes responsible government. The Act not only gave to each Province a sphere of its own, it not only freed the provincial government from the control of the Centre to a very large extent, but also made the provincial executive responsible to the provincial legislature in the whole sphere of provincial administration. Dyarchy was abolished ; the old distinction between reserved and transferred subjects was done away with, and all the provincial subjects were placed under the control of popular ministers. In popular mind the idea of provincial autonomy is indissolubly associated with the establishment of responsible government in the whole sphere of provincial administration. In

short, the provinces become *responsibly governed autonomous political units*.

It should however be remembered that provincial autonomy established by the Act was not an unqualified one. It was limited both externally and internally. As has been explained above, the provinces were only broadly freed from the control of the Central Government. The power vested in the Governor General to issue order to the Governor of a province as to the manner in which the latter was to exercise the authority vested in him for preventing a grave menace to the peace and tranquillity of India or any part thereof and other special responsibilities, etc., constituted a great derogation from the autonomy of the province. Internally, the discretionary authority and the special responsibilities of the Governor placed severe restrictions upon the power of the ministers to put into practice their policies and programme. The safeguards made great inroads into the sphere of responsible government. This point will be elaborated in the next section.

We shall deal with provincial executive, legislative and judicial organs as constituted under the Act in the following sections.

### THE PROVINCIAL EXECUTIVE

**Its Form and Extent.**— In form the provincial executive was broadly similar to the Federal one. The executive authority of the province was vested in its Governor as the representative of the Crown. He derived his power and authority direct from the Crown and not from the Governor General as was the case under and before the Act of 1919. As has been stated earlier, this constituted a fundamental departure from the earlier practice. This was a necessary consequence of the decision to make India a federation.

The executive authority of the Province extended to all matters enumerated in the Provincial Legislative List and the Concurrent List. It did not extend to subjects mentioned in the Federal List. It was exclusive as regards items included in the Provincial List ; the Central Government had no right to legislate upon them except in an emergency or with the consent of the provinces concerned. The executive authority was exercised by the Governor either directly or through officers subordinate to him.

**The Governor.**— The Governor was appointed by the King on

the advice of the Secretary of State for India. The Governors of the three Presidencies were appointed from among men in the public life of Great Britain and usually belonged to aristocratic families, while those of the remaining provinces were appointed from among the ranks of the senior I. C. S. officials on the recommendation of the Governor General. Their salaries and allowances were fixed and could not be altered by the legislature. Throughout the British period only one or two Indians were appointed to this high post in a permanent vacancy and not more than four had officiating charges.

The Governor was appointed usually for a five-year period. At the time of his appointment he was given an Instrument of Instructions which contained directions as to the way in which he was to use his discretion and exercise his individual judgment in the discharge of his special responsibilities. It embodied the conventions or understandings of responsible government as regards his relation to his Ministers. Like the Governor General, a provincial Governor could exercise the executive authority vested in him in three different ways. He could use his discretion, exercise his individual judgment or act on the advice of his Council of Ministers. The difference between acting in discretion and exercising individual judgment has been explained already ; it need not be repeated here. We shall enumerate his discretionary powers and special responsibilities.

**Discretionary Powers of the Governor.**— Although there were no reserved departments in the sphere of provincial administration to be administered by the Governor in his discretion, the scope of his discretionary powers was vast enough to make him the controlling and dominating head of the provincial government. This cumulative effect was to remove the most important part of the executive work from the sphere of his Council of Ministers and to enable him to dominate even the legislature with his powers of initiative and control. Prof. K. T. Shah has enumerated as many as 32 different occasions on which he was authorised to act in his discretion. The more important of them are the following : (i) deciding whether any matter is or is not one in which he is required to use his discretion or act in his individual judgment ; (ii) presiding over the meetings of the Council of Ministers ; (iii) to take steps to combat crimes of violence committed to overthrow the government ;

(iv) to make rules for securing that no member of any police force might divulge to persons (other than those authorised in this behalf) the sources from which information had been received regarding the criminal intentions of terrorists, etc. ; (v) to make rules for the more convenient transaction of the business of the Government ; (vi) to make rules requiring Ministers and Secretaries to the Government to transmit to him all such information with respect to the business of the Provincial Government as is specified in the rules, and particularly those matters which involve any of his special responsibilities ; (vii) removing certain disqualifications of a person enabling him to stand for the legislature ; (viii) to summon or prorogue the Legislature and dissolve the Assembly ; (ix) to summon the two Houses where there was bicameral legislature to a joint sitting ; (x) to decide whether any item of expenditure was votable or non-votable ; (xi) to make rules for the timely completion of financial business of the Legislature ; to prohibit the discussion or the asking of questions on certain subjects ; (xii) to stop discussion or further discussion on a Bill or a clause of a Bill in certain cases ; (xiii) to enact Governor's Acts ; to promulgate Ordinances : to make regulations for the peace and good government of excluded or partially excluded areas ; to give sanction for the introduction of Bills of certain character in the Legislature ; to give assent to or withhold assent from or reserve bills for His Majesty's pleasure ; to appoint the chairman and members of the Provincial Public Service Commission ; and the appointment of his secretarial staff and the determination of their salaries, allowances, etc.

**Special Responsibilities of the Governor.**— It was in the discharge of his special responsibilities that the Governor was required to exercise his individual judgment ; i. e., he had to consult his ministers but was not bound to accept their advice. They are as under :—

1. The prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.
2. The safeguarding of the legitimate interests of minorities.
3. The securing to persons who are or have been members of the public services and to their dependents, of any rights provided or preserved for them under this Act, and the safeguarding of their legitimate interests.

4. The securing, in the executive sphere, of protection against discrimination.

5. The securing of the peace and good government of partially excluded areas.

6. The protection of the rights of any Indian State and the rights and dignity of the Ruler thereof.

7. The securing of the execution of the orders or directions lawfully issued to him under part VI of the Act which deals with administrative relations, by the Governor General in his discretion.

The Governor of Sind had an additional special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme. The Governor of the Central Provinces and Berar was charged with the responsibility of seeing that a reasonable share of the revenues of the province was spent for the benefit of the residents of Berar. It should be observed that the Governor had no special responsibility for safeguarding the financial stability and credit of the Province, and the prevention of any act which would subject goods of the United Kingdom or of Burmese origin imported into India to discriminatory treatment. Coinage, currency and exchange, and the imposition of custom duties being the concern of the Federal Government, there was no occasion for the inclusion of them in the special responsibilities of the Provincial Governors.

Besides these special responsibilities there were a few other matters also where the Governor was authorised to act in his individual judgment. The more important of them were the following : the appointment and dismissal of the Advocate General of the Province and the determination of his salary ; promulgation of Ordinances during the recess of the Legislature, amendment of police rules, certain matters connected with the Services, declaration that the Ruler of any subject of a specified Indian State or any native of a specified tribal area or territory adjacent to India was eligible to hold civil office in the provincial administration.

In the discharge of his special responsibilities and the use of discretionary powers the Governor was responsible to and under the control of the Governor General. He was required to comply with all the directions the latter might issue in his discretion. This provision stood in the way of a progressive and liberal-minded

Governor voluntarily consulting ministers and abiding by their advice in matters lying within the scope of his discretionary powers and individual judgment.

These special powers and responsibilities covered the entire field of administration and ate into the very vitals of government. They constituted a serious infringement upon responsible government in the province and gave the Governor a pivotal position in its administration. He was thus not a constitutional head but possessed great and real powers. He actually governed. The successful working of the Act of 1935 depended greatly on his tact, ability and experience.

The Act vested in the Governor large powers in the financial and legislative spheres which will be described in the next section. We may conclude this account of his powers with a reference to his power to suspend, in whole or in part, the operation of the Act at any time when he felt satisfied that the government of the province could not be carried on in accordance with the provisions of the Act. Under section 93 he could issue a Proclamation declaring that, to the extent specified in it, all his powers were to be exercised by him in his discretion and that he assumed all or any of the powers vested in and exercisable by any provincial body except the High Court. He could dissolve the legislature and abolish the Council of Ministers, and carry on the administration with the help of Advisers. In several provinces the Governors made use of this provision and suspended the working of responsible government when the Congress ministries resigned in 1939. This power was similar to that of the Governor General in the Federal sphere and was subject to similar conditions. It is not necessary to repeat here what was said in that connection.

It will be obvious that 'the Governor's powers are the same for the province as the Governor General enjoys for the whole country, with the distinction that, while he has no Reserved Departments under his personal control and no special responsibility for finance, he has the Excluded Areas to administer in his discretion and the Partially Excluded Areas according to his individual judgment and the extra obligation to execute the Governor General's orders.'\*

**The Council of Ministers.**— Although the executive authority

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\* Masani and Chintaman : *India's Constitution at Work*, page 89.

of the Province was vested in the Governor and was to be exercised in his name, the Act provided for a Council of Ministers to aid and advise him in the exercise of his functions except in so far as he was required by the Act to exercise them in his discretion. The Act did not say anything about the way in which the Governor was to appoint his Council of Ministers or about their relation to the Legislature except that they were to be summoned and chosen by him in his discretion and were to hold office during his pleasure. A Minister ceased to hold office if he was not a member of the Provincial Legislature for a period of six consecutive months. Correctly to understand the position of the Ministers in relation to the Governor and the Legislature, the Act must be read along with the instrument of Instructions. It was laid down in the latter that the Governor should appoint his ministers in consultation with the person who in his judgment was likely to command a stable majority in the Legislature, and that they should collectively command the confidence of the Legislature. In other words, the Governor was asked to invite the leader of the majority party in the Legislature to form the ministry and to appoint those persons whom he recommended as his Ministers. It was only thus that the spirit of collective responsibility could be fostered and encouraged. Though according to the Act the Ministers were to hold office during the pleasure of the Governor, what was contained in the Instrument of Instructions signified that they were to resign office if the Legislature showed want of confidence in them. The observance of the principle of responsible government was sought to be secured in this manner. The Instrument of Instructions was made the vehicle of its introduction and development.

There was one difficulty in the way of the working of the Cabinet type of government in the provinces. The Instrument of Instructions enjoined upon the Governor to see that so far as practicable important minority communities were represented in the ministry. Under the system of separate communal representation, then in vogue in our country, it might not always be possible for a majority party to contain representatives of important minorities. In the rare cases when the majority party had no member belonging to the minority community the Governor took cover under the saving clause 'so far as practicable', and did not insist on compliance with

this provision. The fact that the salaries of the ministers, after they were once determined by an Act of the Legislature, were not subject to its vote at the time of voting on the Budget was also inconsistent with the spirit of responsible government. An important means of enforcing responsibility was thus taken away from the Legislature. The provision that the Governor might in his discretion preside over the meetings of his Council of Ministers was another departure from the practice associated with the working of the Cabinet type of Government in Great Britain.

Since the Ministers were to be practically selected by the Premier, no qualifications could be laid down for them except that they must be members of the Legislature. And since for continuing in office they depended upon the support of the Legislature, they could have no fixed tenure of office. The ministry could remain in office so long as it retained a majority in the Provincial Assembly. The Act did not say anything about the number of ministers a province might have. Their number varied from province to province, apparently without regard to its size and population. Assam had eight ministers while the United Provinces had six, and the Central Provinces only five. At one time Bengal had as many as eleven ministers.

The Provincial Cabinet worked on the portfolio system. Each minister was put in charge of one or more departments for whose administration he was held responsible. Ordinary and routine matters were disposed of by the minister in charge of the department himself; important questions of principle and policy were discussed and decided by the Cabinet as a whole. To assist him in administering the department or departments under his charge, a minister was given one or more parliamentary secretaries. These officials are generally found in countries having the parliamentary form of government.

The Provincial Executive was thus of the cabinet or parliamentary type. It consisted of the Governor who represented the Crown as the supreme head of the Province, and a Council of Ministers responsible to the legislature. The Provinces thus enjoyed responsible government. The discretionary powers and special responsibilities of the Governor restricted the scope of responsible government. Communal electorates and communal parties, the scheme of representation in the Provincial Legislature, and the power of the Governor to suspend the Constitution were inconsistent with

the principles of responsible government and retarded its development. Full and genuine responsible government cannot thus be said to have been conceded by the Act even in the provincial sphere. Nevertheless, the Act of 1935 was a great advance on the Act of 1919.

### PROVINCIAL LEGISLATURE

**Its Constitution.**— While all the Governors' Provinces had essentially the same type of executive, in the constitution of their legislatures they showed difference in one fundamental respect. Six of them—namely, Assam, Madras, Bengal, Bombay, Bihar, and the United Provinces (the student can easily remember their names with the help of the mnemonic word *ambu*)—were given a bicameral legislature. The lower and more democratic chamber was called the Legislative Assembly, and the oligarchic upper chamber was known as the Legislative Council. The remaining Provinces—namely, the Punjab, the Central Provinces and Berar, the North-Western Frontier Province, Orissa, and Sind—had each a single chamber called the Legislative Assembly. In every province the Governor as the representative of the King Emperor was an integral part of the Legislature.

The Act of 1935 introduced the bicameral system of legislature in some of the provinces for the first time. The question of introducing it in the provinces was considered and rejected by Mr. Montague and Lord Chelmsford on the ground that it was unnecessary and inexpedient. The J. P. C. came to a different conclusion and accepting the proposal of the White Paper recommended the establishment of second chambers in five provinces. The British Parliament added Assam to the list. If the arguments for and against its introduction are carefully considered and weighed, it will be found that the case rests on very weak foundations. Indian opinion regarded it as a retrograde step and as an unwanted and unwarranted brake upon progressive legislation on matters social, economic and political. It was a concession to vested interests which were afraid lest the introduction of democracy should adversely affect them. But strange as it may seem, our new constitution provides for bicameralism in some provinces as an experimental measure.

The introduction of second chambers was sought to be defended on the following grounds : (i) In view of the enlarged powers of the provincial legislatures it was necessary to create second chambers in some provinces to give representation to vested interests. On

examination it would be found that vested interests were strong in all the six provinces where the system was introduced. In the U. P., and Bengal and Bihar there were big landlords; their zamindari interests had to be safeguarded; in Madras and Bombay there were strong capitalist interests as much deserving of protection as the zamindari interests in the first named three provinces. In Assam there were the powerful tea planters. (ii) The second chamber was deemed to be necessary as providing a safeguard against hasty, rash, and ill-considered legislation which the lower chamber was calculated to pass because of the strong popular element it was expected to have. This point is well put by Lord Halifax in the following words: 'In India, embarking upon a new career of responsible legislative powers, there is everything to be said, where material for such Chambers exists, for establishing such Chambers for the purpose of revision and the encouragement of prudent legislation and to resist imprudent legislation at all events, giving the other Chamber the opportunity of second thought. It is not to entrench privilege or afford merely one more tiresome check upon the opportunities in India to adopt a progressive policy.\*

Progressive Indian opinion was opposed to the system on the ground that the second chambers, dominated as they would be by vested interests, would be highly conservative and reactionary in outlook, and would therefore impede progressive social and economic legislation. It was also contended that it would be difficult to find suitable personnel to man the second chambers in the provinces. Persons of requisite qualifications to act as elder statesmen were not available in sufficient number. In the third place, it was argued that in view of the ample safeguards provided in the shape of the special powers and responsibilities of the Governor, any further check upon hasty and imprudent legislation by the provincial assemblies was uncalled for. The fear that the second chambers would act as citadels of reactionary politics and add much to the cost of administration was borne out by the experience of their working.

**Composition of the Legislative Councils.**— The composition of the Legislative Councils in the six provinces named above where the bicameral system was introduced is set forth in the table given below :

\* Quoted by Joshi : *The New Constitution of India*, page 213.

| Province. | Total of Seats.                      | General Seats | Moham. Seats. | European Seats. | Ind. Chris. Seats. | Seats to be filled by Leg. Ass. | Seats to be filled by Governor      |
|-----------|--------------------------------------|---------------|---------------|-----------------|--------------------|---------------------------------|-------------------------------------|
| Madras    | Not less than 54<br>not more than 56 | 35            | 7             | 1               | 3                  |                                 | Not less than 8<br>not more than 10 |
| Bombay    | Not less than 29<br>not more than 30 | 20            | 5             | 1               | —                  |                                 | Not less than 3<br>not more than 4  |
| Bengal    | Not less than 63<br>not more than 65 | 15            | 17            | 3               | —                  | 27                              | Not less than 6<br>not more than 8  |
| U. P.     | Not less than 58<br>not more than 60 | 34            | 17            | 1               | —                  |                                 | Not less than 6<br>not more than 8  |
| Bihar     | Not less than 29<br>not more than 30 | 9             | 4             | 2               | —                  | 11                              | Not less than 3<br>not more than 4  |
| Assam     | Not less than 21<br>not more than 22 | 10            | 6             | 2               | —                  |                                 | Not less than 3<br>not more than 4  |

The seats to be filled by the Assembly in Bengal and Bihar were to be filled in accordance with the system of Proportional Representation by means of single transferable vote. In each case the Governor was given the power to nominate a limited number of persons to the Council in order to provide representation for special interests, particularly for women, and also to redress any possible inequality.

Like the Federal Council of State, the Provincial Legislative Councils were to be permanent bodies not subject to dissolution. Nearly one-third of the members were to retire every three years. Members were elected for a term of nine years. When the Councils were first constituted in 1937, the Governor of each province, acting in his discretion, curtailed the tenure of one-third of the members to three years, and of the other one-third to six years to provide for the election of nearly one-third of the members at the end of every three years. A member chosen to fill a casual vacancy was to be chosen for the remainder of his predecessor's term of office.

**Composition of the Legislative Assemblies.**— The table on the next page sets forth the scheme of composition of the Legislative Assemblies in the various provinces. It will be observed that each Assembly consisted of elected members only; the nominated bloc whose presence formed such an important feature of the provincial legislatures, under the Act of 1919 was done away with altogether.

## Provincial Legislative Assemblies

## TABLE OF SEATS

The total of seats was, in each case, divided among the communities and interests according to the scheme embodied in the notorious Communal Award given by Mr. Ramsay Macdonald in 1932, as modified by the Poona Pact. The Award created as many as 17 different electorates. They are as follows : 1. General electorates consisting of the Hindus and such communities as have not sought and obtained separate communal representation, e. g., the Parsis. 2. Seats were reserved for the Scheduled Classes in accordance with the Poona Pact, but they were out of general seats. 3. Electorates for Mohammedans. 4. Electorate for Europeans. 5. Electorates for Anglo-Indians. 6. Electorates for Indian Christians. 7. Electorates for Sikhs in the Punjab and the North West Frontier Province. 8. Electorates for Commerce and Industry including mining and planting interests. 9. Electorates for Landlords. 10. Electorates for Labour. 11. University Electorates. 12. Electorates for backward areas and tribes. 13. Electorates for women, General. 14. Electorates for Sikh women in the Punjab. 15. Electorates for Mohammedan women. 16. Electorate for Indian Christian women in Madras. 17. Electorate for Anglo-Indian women in Bengal. The seats assigned to each of them were fixed by the Award for each province. The essence of the scheme was that the Muslims could vote for the Muslims only, the Sikhs for the Sikhs, the Europeans for the Europeans, the Anglo-Indians for the Anglo-Indians, and the Indian Christians for the Indian Christians only. No Muslim, Sikh, European, Indian Christian and Anglo-Indian could stand from a general constituency or be a voter in it. The result of this system of communal representation through separate electorates was to divide the nation into water-tight compartments, destroy national unity, and foster and encourage selfish and separatist tendencies.

The Award gave special representation through separate electorates to the Scheduled Classes also, in spite of the warning given to the British Government by Mahatma Gandhi that he would resist with his life any scheme to disintegrate the Hindu community. When the award was published, Mahatmaji gave notice to the British Government that he would fast unto death unless separate electorates for the Depressed Classes were given up. There was a great stir in the country when Mahatmaji entered upon his historic fast in the Yervada Jail. The representatives of the Caste Hindus and the

Scheduled Classes met together and arrived at a mutually agreed scheme which gave the Depressed Classes almost double the number of seats allotted by the Award but retained common electorates with the Hindus. According to the Poona Pact the seats reserved for the Depressed Classes were to be filled by an unusual form of double election. All members of the Depressed Classes whose names were entered in the electoral roll of a general constituency which was to return one Scheduled Class representative were to elect a panel of four men from amongst themselves. The four candidates who received the highest number of votes in this primary election were to be the only candidates eligible to stand for election from the constituency at the time of general election when the whole body of electors, caste Hindus and members of the Depressed Classes, were to vote together, and the candidate receiving the highest number of votes was to be returned as the representative of the Depressed Classes.

The Legislative Assemblies, unless sooner dissolved by the Governors in their discretion, were to continue for a period of five years from the day of their first meeting. Their terms could not be extended by the Governor. A person could not be a member of both Chambers of the provincial legislature. He could not also be a member of both the Federal Legislature and a Provincial Legislature. If he was elected to both, he had to resign his seat in one of them. If he failed to do so within a period specified by the Governor, his seat in the Provincial Legislature was to be declared vacant.

**Composition of U. P. Legislature.**— It was composed of the Governor as the representative of the King-Emperor, and two Chambers respectively called the Legislative Council and the Legislative Assembly. The Legislative Council was to consist of not less than 58 and not more than 60 members of whom not less than 6 and not more than 8 were to be nominated by the Governor. Of the remaining 52 elected seats, 34 were General, 17 Muslims, and 1 was the European seat. The Legislative Assembly contained 228 members. Out of them, 140 represented the General Constituencies, 20 represented the Scheduled Classes, and 64 were Muslims. Europeans and Indian Christians had two representatives each, and Anglo-Indians one. There were three representatives of Commerce and Industry, three of labour, and six of landlords. The three provincial

universities had one representative. There were 6 women's seats in all, 4 General and 2 Muslim.

**Franchise for the Assembly.**— The Act did not lay down franchise qualifications. They were determined by an Order-in-Council which generally followed the findings of the Franchise Committee presided over by Lord Lothian. Under the Act of 1919 the right to vote was extended to about 3 % of the total population. The Simon Commission recommended the enfranchisement of not less than 10 % of the population. The First Round Table Conference wanted the right to be extended to about a quarter of the total population. Progressive Indian opinion had for long demanded the introduction of universal adult franchise. The Franchise Committee appointed by the Second R. T. C. enfranchised about 14 % of the total population of British India. The electorate for elections under the Act of 1935 consisted of some 35 million voters of whom between 28 and 29 million were males and over 6 million females, as compared with 7 million males and three hundred and fifteen thousand females under the old franchise. About 10 % of the Scheduled Classes were enfranchised.

In order to be entitled to get his or her name registered in the electoral roll of a constituency, a person had to satisfy several types of qualifications. He must have been a British subject, or the Ruler or a subject of a State which had acceded to the Federation, or a subject of any prescribed Indian State, and must have been 21 years of age at least. If the constituency was a Muslim, Sikh, Indian Christian, Anglo-Indian or European constituency, he must have been a Muslim, a Sikh, an Indian Christian, an Anglo-Indian, or a European respectively. No one who was entitled to be a voter in any one of these constituencies could be a voter in a General constituency. This did not apply to general seats reserved for women in Assam and Orrissa. In every case, the person must have resided in the constituency for a period which varied in different provinces, being 120 days in Madras and 180 days in Bombay. In addition, he must have satisfied at least one of the following qualifications : payment of income-tax, land revenue or rent in respect of agricultural land, house-rent in cities or municipal tax above a certain minimum. Possession of certain educational qualifications, e. g., having passed the matriculation examination, or being a discharged, pensioned or

retired officer or soldier in the army also entitled a person to become a voter. Special qualifications were laid down for women and members of the Scheduled Classes to secure their adequate representation. .

Electoral qualifications varied according to the circumstances prevailing in different provinces. Their general effect was however to enfranchise nearly the same classes and categories of population in all the provinces. In view of the establishment of universal adult franchise under the New Constitution it is not necessary to describe the qualifications of voters for the Assembly and the Council in the U. P. Only this much may be pointed out that the property and tax paying qualifications were higher for the Council than for the Assembly.

**Officers, Sessions, etc., of the Legislature.**— In each province the Assembly was authorised to elect one of its members as its Speaker and another as its Deputy Speaker for its duration. These two officers could resign earlier, and could also be removed from offices by a vote of the members. The Council, where it existed, too, had the right to elect its presiding officer, who was known as President, and a Deputy-President. The sessions of the two chambers were called by the Governor subject to the provision that more than six months could not elapse between the end of one session and the beginning of another. Every minister had the right to address either house, but could vote only in the house of which he was a member. The Advocate General also had the right to participate in the proceedings of either chamber but without the right to vote. Members enjoyed the right of freedom of speech and such other privileges as are extended to members of legislatures all the world over. They received such salaries and allowances as were determined by the legislature.

**Powers and Functions.**— The powers and functions of a Provincial Legislature are greatly similar to those of the Federal Legislature. They may be described under four different heads : legislative, financial, administrative, and deliberative.

(i) **Legislative Powers.**— The Provincial Legislature was the sole law-making agency in the Province. It had the exclusive power to make laws for the whole or any part of the province on matters enumerated in the Provincial Legislative List. Except under an

emergency or with the consent of two or more Provinces, the Federal legislature had no power to legislate upon them. The Provincial Legislature had concurrent powers with the Federal Legislature to make laws on matters enumerated in the Concurrent Legislative List. It had no power to legislate on matters included in the Federal Legislative List which were exclusively within the jurisdiction of the Federal Legislature.

Like the Federal Legislature, the Provincial Legislatures were non-sovereign legislative bodies. Their legislative competence was restricted in several ways. In view of what has been said about the Federal Legislature on this topic, it is not necessary to enter into details here. It is sufficient to point out that there were certain matters on which the Provincial Legislatures could not legislate at all, and other matters legislation concerning which could not be undertaken without the previous sanction given by the Governor in his discretion. The Governor possessed a real veto over the legislature. The Governor of a Province could reserve a Bill for the consideration of the Governor General who could either assent to it on behalf of the King-Emperor, or return it to the Provincial Legislature for reconsideration or reserve it for His Majesty's consideration. Above all there was the power vested in the King to disallow a Bill to which the Governor or the Governor General had given assent. Provisions with regard to discrimination were also in the nature of restrictions on its authority. It is hardly necessary to remind the reader that the Provincial Legislatures had no constituent powers.

(ii) *Financial Powers.*— The financial powers of a Provincial Legislature were broadly similar to those of the Federal Legislature. Except in one important respect the financial procedure was identical in the two spheres, the difference being that whereas in the Federal Legislature the Council of State was given the power to vote supplies along with the House of Assembly, in the provincial sphere, even where bicameralism was introduced, the power to vote supplies was the exclusive concern of the Legislative Assembly ; the Legislative Council had nothing to do with voting on demands for grants.

Like the Federal Legislature, a Provincial Legislature had no initiative in financial matters. All proposals for imposing or increasing taxation, borrowing money, and for charging expenditure on

provincial revenues could come only with the previous recommendation of the Governor. The initiative thus lay with him. He caused the Annual Financial Statement to be laid before the Chamber or Chambers before the commencement of the financial year. The Statement showed separately (i) sums required to meet expenditure charged on the provincial revenues and thus not requiring the vote of the Assembly, and (ii) sums required to meet other expenditure not so charged and therefore standing in need of the Assembly's vote. If there were any sums included solely because the Governor had directed their inclusion as being necessary for the proper discharge of any of his special responsibilities, they had to be shown separately. Any question whether any proposed expenditure was a charge on provincial revenues or not was to be decided by the Governor in his discretion. The following were the items of expenditure charged on provincial revenues :

- (a) Salaries and allowances of the Governor and other expenditure relating to his office for which provision is made by an Order-in-Council.
- (b) Debt charges for which the Province was liable, including interest, sinking fund and redemption charges, expenditure incurred in raising loans and the service and redemption of debt.
- (c) Salaries and allowances of the Ministers and the Advocate General. There was neither precedent nor warrant for making the salaries of the Ministers a non-votable subject. This was inconsistent with true parliamentary procedure.
- (d) Salaries and allowances of the High Court Judges.
- (e) Expenditure incurred in connection with the administration of Excluded areas.
- (f) Sums required to satisfy the judgment, award or decree of any court.
- (g) Any other expenditure charged by the Act.

Though not subject to the vote of the Assembly, all these items except the salary and allowances of the Governor could be discussed by the Legislature. Votable expenditure was to be submitted to the Legislative Assembly in the form of demands for grants. The Assembly could refuse a grant, reduce it, or assent to it. It could not increase or transfer it.

After the voting on the various demands was over, the Governor authenticated by his signature a schedule specifying (i) the grants made by the Assembly, (ii) the grants reduced or refused by the Assembly but included by him as being necessary for the proper discharge of any of his special responsibilities, and (iii) the sums charged on the revenues of the Province. The authenticated Schedule was to be laid before the Assembly but was not open to discussion or voting. No expenditure from the revenues of the Province was authorised unless it was in accordance with the authenticated Schedule. If in the course of the financial year further expenditure became necessary, a Supplementary Statement had to be placed before the Assembly and the same procedure had to be gone through.

It is thus clear that, as in the Federal Government so in the case of Provincial Governments, a substantial portion of the revenues was spent on purposes over which the Legislature had no control. This portion was much greater in the Federal than in the Provincial sphere because there were no reserved departments in the latter. Over the rest of the budget the control of the Legislature was subject to the power of the Governor to restore a refused or reduced grant, if the refusal or the reduction affected the due discharge of any of his special responsibilities. The financial powers of the Provincial Legislature were thus limited and restricted in various ways.

(iii) *Control over Administration.*— A Legislature exercises supervision and control over administration through its power of voting supplies, moving motions of adjournment and resolutions on important questions of policy, and asking questions and supplementary questions. The Provincial Legislatures had all these powers granted to them. We have examined the extent to which they controlled finance. Since the tenure of the Ministers practically depended upon the pleasure and good-will of the Legislative Assembly, the resolutions adopted by the latter had to be given effect to by the administration. The question hour was a very lively and interesting time of which the members made a very good use in exposing the acts of omission and commission of the executive. The Committees set up by the Legislature were also highly useful for this purpose.

It should be remembered that in so far as the Governor administered any affair in his discretion or in the exercise of his individual judgment, the Legislature was precluded from exercising any effective control over it. The fact that the superior Services, though working under the popular Ministers, were not subject to their control (the ministers could not take any disciplinary action against them), also reduced the control of the Legislature over the administration.

(iv) *Deliberative Powers.*— Subject to the power of the Governor to prohibit questions and resolutions on certain subjects, the provincial legislature had full power to move resolutions and discuss important questions of national policy. The power of the legislature to mould and shape the policies of the Provincial Government was more real and less restricted than its financial powers and the power to control administration.

**The Governor and the Legislature.**— The Act gave to the Governor several powers in regard to the provincial legislature. Some of them were of a routine nature and resembled the powers exercised by the British King in regard to the British Parliament; e. g., he summoned the Chamber or the Chambers in session and prorogued them, and could dissolve the Assembly before the expiry of its full term. He had the right to address the chambers separately or jointly, and send messages to them in regard to pending bills. In case of differences between the two chambers he could, in his discretion, summon a joint sitting to settle them. His assent was necessary for bills passed by the legislature. He could withhold his assent and thus prevent a bill passed by the legislature from being placed on the statute book. Although every chamber had the right to make rules for regulating its business and procedure, the Act gave to the Governor the extraordinary power of making rules, after consulting the Speaker and the President as the case may be, for regulating the procedure and conduct of business in matters where he had any special responsibility. He could also make rules for the timely completion of the financial business. This power of making rules was a serious encroachment on the powers of the legislature. He was also given the extraordinary power of framing rules prohibiting, except with his previous permission, the asking of questions on the discussion of matters pertaining to the relations

between the Indian Government and any foreign power or Indian State, or affecting the administration of tribal and excluded areas. If he was satisfied that the discussion of a bill, clause of a bill or amendment to a clause involved great menace to the peace and tranquillity of the province or adversely affected the discharge of any of his special responsibilities, he could stop discussion on the bill and direct that no further proceedings be taken in relation to it. All these extraordinary powers enabled him to exercise great influence on the legislature and detracted from the value of provincial autonomy ; they were most undemocratic.

**Legislative powers of the Governor.**— The Governor not only enjoyed powers of initiation, regulation and control in respect of the Provincial Legislature, he was also vested with the power of putting laws on the statute book over its head and even against its will. Like the Governor General he was empowered to enact what were called Governor's Acts, promulgate Ordinances when the Legislature was in recess and also when it was in session. These powers were conferred on him for the first time by the Act of 1935. If the Governor thought that for the proper discharge of his functions where he was required to use his discretion or exercise his individual judgment, legislative provision was necessary, he could, with the concurrence of the Governor General, put on the statute book a permanent Act called the Governor's Act without consulting the Legislature or after considering its views. Every such Act was to be communicated through the Governor General to the Secretary of State, who had to place it before Parliament. A Governor's Act had the same force and validity as an Act passed by the Legislature and assented to by the Governor. This was, of course, an extraordinary provision apparently inconsistent with the principles of responsible government, but necessitated by the special responsibilities of the Governor in the administrative field.

When the Provincial Legislature was not in session and a situation arose requiring immediate action, the Minister concerned could advise the Governor to issue an Ordinance. If the matter was one where the Governor was required to exercise his individual judgment, or the Ordinance contained provisions which, had they been brought forward in the form of a regular Bill, would have required the previous sanction of the Governor or the Governor

General, the Governor was to exercise his individual judgment in promulgating it. In cases where the bill would have required the previous sanction of the Governor General, the Ordinance could not be issued without the concurrence of the Governor General. An Ordinance of this type had the same force and effect as an Act of the Legislature but had to be laid before the Legislature when it met, and ceased to operate after six weeks of its meeting unless disapproved earlier. It could be withdrawn by the Governor any time. Two Ordinances of this type were passed in 1939 on the advice of Congress Ministers, the Madras Temple Entry Indemnity Ordinance, and the Bombay Fodder and Grain Ordinance.

There was another type of Ordinance which the Governor could issue on his own initiative and acting in his discretion. If at any time, whether the Legislature was in session or not, the Governor was satisfied that immediate action was necessary for the proper discharge of any of those functions which had to be performed in his discretion or involved any of his special responsibilities, he could issue an Ordinance without consulting his ministers. It was not necessary for such an Ordinance to be placed before the Legislature, and it could remain in force for a period of six months, but could be extended for a further similar period. The power of issuing such an Ordinance had to be used with the concurrence of the Governor General except in an emergency. Like the first this was also an extraordinary power incompatible with responsible government.

The power of the Governor to issue a proclamation suspending the constitution in whole or in part and assuming to himself all or any of the powers of any provincial authority except the High Court in the event of the breakdown of the constitutional machinery has already been referred to.

#### EXCLUDED AND PARTIALLY EXCLUDED AREAS

In the foregoing account of provincial government on several occasions reference has been made to excluded and partially excluded areas whose administration was a special responsibility of the Governor. It seems necessary to explain the meaning of these terms.

The whole of British India was not equally advanced educationally, politically, and economically. There were certain communities inhabiting certain areas which were backward; e. g., the

Gonds and the Santhals. Parliamentary institutions could not possibly be introduced among such communities. The British Government, out of their great solicitude for their welfare, feared that their interests were liable to be neglected by the popular ministers. Such areas were therefore excluded from the operation of responsible government, and their administration made a special concern of the Governor. An Order-in-Council made on the 3rd of March, 1936, named the various excluded and partially excluded areas in the different provinces.

If an area was so backward that parliamentary institutions could not be introduced in it at all, it was classed as a *wholly excluded* area. The Naga Hill district in Assam and a portion of the Kangra district in the Punjab were two of the several such areas. They were placed under the direct administration of the Governor. If an area was less backward, so that some of the laws passed by the provincial legislature could be applied to it, it was called a *partially excluded* area. The Governor had a special responsibility for its administration. The Jaunsar-Bawar pargana of the Dehru Dun district, and a portion of the Mirzapur district were classified as partially excluded areas in the United Provinces.

#### PROVINCIAL JUDICIARY

The Act of 1935 dealt with the High Court only. It recognised the following ten courts as High Courts: the six High courts of Calcutta, Madras, Bombay, Allahabad, Lahore and Patna; the Chief Court of Oudh, the Judicial Commissioners' Courts in C. P., the N. W. F. P. and Sind. The maximum number of judges of each High Court was to be determined by His Majesty in Council. Judges were to hold office till the age of 60 years but could be removed earlier by His Majesty in the same way in which judges of the Federal Court could be removed. The Governor General could appoint temporary additional judges for not more than two years.

#### THE HOME GOVERNMENT

**Introductory.**— To the extent the Governor General of India and the Provincial Governors were required by the Act of 1935 to carry on the work of administration on the advice of popular ministers, their responsibility to the Secretary of State for India had to be relaxed. The Act of 1935 had therefore to carry the process of

relaxing the control of the Home Government much farther than was done by the Act of 1919. The principal changes made by it are noted below.

**The Secretary of State for India.**— The Act of 1935 made a fundamental change in the legal status of the Secretary of State for India. The change consisted in this that whereas under the Act of 1919 he was in the foreground and the Crown in the background, under the new Act he fell into the background and the Crown came into the foreground. There is no section in the Act of 1935 corresponding to the section in the Act of 1919 which vested the superintendence, direction, and control over all acts, operations and concerns of India in the Secretary of State. Instead, the Act vested territories and the executive authority in India in the Crown. In this manner the Crown came into the foreground. But because all the powers of the Crown in relation to India were to be exercised on the advice of its constitutional adviser, the Secretary of State for India, the powers of the latter in reality remained great. The change made by the Act was thus more formal than real.

In all the matters in which the Governor General and the Provincial Governors were required by the Act to use their discretion or exercise their individual judgment, they remained under the control of the Secretary of State and had to pay obedience to his orders and instructions. Since the discretionary powers and special responsibilities of the Governor General and the Governors covered almost the entire field of administration, the control of the Secretary of State over Indian affairs was bound to be extensive. He was in a position to control the administration of the key departments of Foreign Relations, Defence, and Tribal Areas in the federal sphere. He also regulated the currency and exchange system of the country which were to be managed by the Reserve Bank. It is hardly necessary to refer to the other discretionary powers and special responsibilities of the Governor General and the Governors like the issue of Ordinances and the enactment of special Acts. As the constitutional adviser of His Majesty he was in a position to control the issue of the Orders-in-Council, the issue of the Instruments of Instructions to the Governor General and the Governors, the appointment of the Governors, and of the High Court judges. He exercised His Majesty's power of disallowing Acts passed by the Indian Legis-

latures and assented to by the Governor General or the Governors. He possessed the power to borrow money in the British market on behalf of the Federal and Provincial Governments, recruit the personnel of the Public Services and determine the conditions of their service, salaries, allowances and pensions, and protect their interests. The great role played by the Secretary of State in Indian administration may best be described in the following words of Prof. K. T. Shah : 'His powers may not be so imposing in appearance as those of the Governor General or the Provincial Governors. But these are merely his creatures, obedient to every nod from the Jupiter of White Hall, amenable to every hint from this juggler of Charles Street. His powers extend not merely to matters of fundamental policy ; to the protection of British vested interests ; to the safeguarding of Britain's imperialist domination. They comprise even matters of routine administration, the more important doings of the Indian Legislatures and even the appointment, payment or superannuation of certain officers in the various Indian services or governments. He has, in fact, all the powers and authority in the governance of India, with little or none of its responsibility.'\*

**Advisers to the Secretary of State.**— The India Council, which had been instituted along with the creation of the office of the Secretary of State for India in 1858 and against whose continued existence there was a strong opposition in our country, was after all abolished by the Act of 1935. It ceased to function the day the new Constitution was inaugurated ; namely, on the 1st of April, 1937. But the J. P. C. which recommended its abolition also felt the necessity of providing the Secretary of State with experienced advice on Indian questions. The Act therefore provided for the appointment of a number of *Advisers* to the Secretary of State. They were to be not less than three and not more than six in number, and were to be appointed by the Secretary of State for the purpose of advising him on any matter on which he might seek their advice. One half of them were to be persons who must have served in India under the Crown for not less than 10 years and must not have relinquished their office more than two years before their appointment. They were to hold office for a period of five years and were not eligible for reappointment. They could resign office earlier, and could be

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\* *Federal Structure*, page 386.

removed from office by the Secretary of State on ground of infirmity of mind or body. The members of the India Council as it existed on the eve of its dissolution were eligible for appointment as Advisers. The Advisers could not become members of Parliament, and were to receive each a salary of £ 1350/- per annum, plus an annual allowance of £ 600/- for those who were domiciled in India at the time of their appointment. No Adviser could sit or vote in Parliament.

Whether or not to consult his Advisers on any matter, or whether to consult them individually or collectively was left to the discretion of the Secretary of State. And after having consulted them, he might or might not have accepted their advice. But in respect of matters pertaining to the Public Services he had to consult them and abide by the advice of the majority.

Progressive Indian opinion regarded the Advisers as the extinguished India Council in disguised form, and was therefore unreconciled to their existence. In view of their qualifications we may say that they were very likely to exert a reactionary and conservative influence on the Secretary of State. It is highly significant to note that Sir Reginald Maxwell, who made himself notorious and most unpopular with the Indian people by the manner in which he tried to thwart Indian aspirations and repress the national movement, was appointed as his Adviser by the Secretary of State on his relinquishing service in India.

Before the Act of 1935 came into force the expenses of the India Office establishment were a charge upon Indian revenues. An annual grant of £ 1,50,000 was made towards the expenses by the British Treasury. Under the new Act this arrangement was reversed. The expenses were thenceforth to be met out of funds provided by Parliament but the Government of India was required to make a contribution towards the cost. Since its amount was to be determined by the Treasury\* and the Governor General, from the financial point of view it did not make much difference.

**High Commissioner for India.**— The office of the High Commissioner for India was created under the Act of 1919. The agency functions previously discharged by the Secretary of State

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\* Treasury is the name by which the Finance Department of the Government of Great Britain is known.

were taken away from him and entrusted to the High Commissioner. The Act of 1935 retained the office. Its incumbent was to be appointed by the Governor General acting in his individual judgment. His salary was determined by the same authority and was met out of Indian revenues. The term of his office was usually five years. His principal duty was to procure for the Federal Government, the Provincial Governments and such Indian States as might have joined the Federation and also for Burma such commodities as they might require. He was expected to make purchases after inviting tenders and in the cheapest market. He was expected to bear in mind Indian interests in making the contracts. He also looked after the welfare of Indian students prosecuting their studies in England. The Act of 1935 made no substantial change in the position, status or functions of the High Commissioner. The Dominions also have their High Commissioners in London. There was a fundamental difference between the Dominion High Commissioners and the Indian High Commissioner. The former represent their respective Governments and act as a channel of communication between the Imperial Government and the Dominion Governments. The High Commissioner for India had no such status and function.

**Parliamentary Control.**-- Even during the rule of the East India Company the British Parliament claimed and exercised powers of sovereignty over British territories in India. When the Company rule came to an end and the responsibility for the Government of India was transferred to the Crown, the sovereignty of the King-in-Parliament was formally and legally proclaimed.

This sovereignty was exercised in several ways. The most important of them was the determination of India's constitution and the pace of her constitutional development. The Preamble to the Government of India Act of 1919 gave expression to it in unmistakable terms. We have laid stress on the non-sovereign character of the Indian Legislatures more than once. In this connection, it should also be remembered that Parliament had the power to alter and repeal the laws made by the Indian Legislatures and to make laws for British India. The power of the King-Emperor to disallow any law made by the Indian Legislatures was also a deduction from the sovereignty of the Crown. There were no limitations or restrictions upon the sovereignty of the King-in-Parliament.

Being situated at a distance of about 6,000 miles and also as a result of the ignorance of its members about Indian conditions and affairs, Parliament was not in a position itself to direct and control the administration of India. This task was left to its agent, the Secretary of State for India. The extent to which this dignitary exercised control over Indian affairs has already been examined. Even under the Act of 1919 the need of relaxing his control was felt, and rules were made to that effect. The position was that the Secretary of State was not responsible to Parliament for the administration of subjects transferred to the control of popular ministers in the Provinces. With regard to the Central Government, the convention was developed that the Secretary of State would not interfere if on any matter of fiscal policy there was agreement between the Government of India and the Central Legislature.

Since the Act of 1935 contemplated greater transfer of political power to the people, the responsibility of the Secretary of State to Parliament correspondingly diminished. A government can not be made answerable to two different authorities. The Government of India could be responsible to the people of the country or to the British Parliament ; it could not be made responsible to both at one and the same time and for the same things. In so far as the Provincial Governments were answerable to their respective Legislatures, the control of the Secretary of State had to be abandoned. The same thing would have held good about the Federal Government. But since the transfer of power was not full and complete—there were serious limitations upon provincial responsibility, and there were reserved subjects in the centre—the control of the Secretary of State could not be fully withdrawn. In so far as the Governor General and the Provincial Governors were required by the Act to use their discretion or exercise their individual judgment, they remained answerable to the Secretary of State and through him to Parliament.

Even when India became a Dominion in 1947, and the control over the administration of internal affairs was completely transferred to the people, the Crown remained the sovereign Power, and India continued to owe allegiance to the British King. Parliament was, however, completely deprived of its right to control Indian administration. And when India declared herself a Sovereign Republic on

January 26, 1950, her connection with the British Empire altogether ceased and the sovereignty of the Crown also came to an end.

**Amendment of the Constitution.**—A few words may be added about the way in which the Indian Constitution could be amended. It was very rigid; it had no seed of growth in it and seemed to bear an oppressive impress of finality. The people of India and their elected representatives in the various legislatures were not given any power to amend the constitution except in a very minor matter. As has been already stated, the Federal Legislature was given the power to extend the appellate jurisdiction of the Federal Court. In all other respects, the right to amend the constitution was reserved by Parliament to itself.

In a few matters of minor importance the Act could be amended by means of Orders-in-Council with the assent of Parliament and on request by the Federal or Provincial Legislatures. They are the following : (i) The size and composition of the Chambers of the Federal Legislature, the method of election to them and qualifications of the members thereof but in such a manner as not to vary the relative proportion between the Council and the Assembly and between the States and British India ; (ii) the number of Chambers in a Provincial Legislature, their size or membership ; (iii) any amendments with regard to the qualifications of members ; and (iv) the substitution of literacy in place of higher educational qualifications for women, or the entry of their names without application. Except as regards the last, no amendments could be made before the expiry of ten years from the establishment of Federation or Provincial Autonomy, as the case may be. The procedure laid down was very elaborate. It is not necessary to describe it.

One more point about the amendment of the constitution deserves mention. The Act laid down that, leaving aside certain matters which are enumerated in Schedule 2 (they do not touch the fundamentals of the structure of the Federal Government), the consent of the federating States was necessary for the amendment of the Act. In other words, unless the States agreed, full responsibilities could not be introduced in the Federal sphere. The advance towards full responsible government was made dependent on the goodwill of the States. This was a highly retrograde step.

## CHAPTER XIII

### PROVINCIAL AUTONOMY AT WORK

**Introductory.**— In the two preceding chapters we have described the main provisions of the Government of India Act of 1935 in so far as they relate to the establishment of the Indian Federation, and the structure, composition, powers and functions of the federal and provincial governments. There is no doubt that the Act constituted a great advance on the Act of 1919 ; it proposed the introduction of partial responsibility in the Centre and the establishment of full responsibility in the provinces. But progressive opinion in the country as voiced in the resolutions passed by the Indian National Congress at its Faizpur session and the speeches delivered by its accredited spokesmen condemned it lock, stock and barrel. It was denounced because of the reservations and safeguards which figured so prominently in it, and which, if interpreted strictly and enforced vigorously, would have killed the soul of responsible government. The Governor General and the Provincial Governors had the power to intervene in almost every sphere of administration ; they could not only veto legislation, but also legislate on their own authority, and do almost anything they wanted, even in direct opposition to the wishes of the popular ministers. The superior services and the police were protected and could hardly be touched by the ministers ; they looked to the Governor and not to the ministers for guidance. In short, the machinery and structure of government, from the Governor down to the petty official and the policeman, remained what it was in the past ; only somewhere in the middle of it popular ministers were to carry on as best as they could.

**General Elections of 1937.**— As has been shown earlier, on account of the delay in the accession of the Indian States to the proposed Indian Federation it was decided by the British Government to give effect only to that part of the Government of India Act of 1935 which pertained to the establishment of responsible government in the Governors' Provinces. Arrangements were therefore made for the general elections in the Provinces, which were to be held early in 1937. Inspite of the highly disappointing nature of the

Act, Congress decided to take part in the elections to the provincial legislatures. Its President, Pandit Jawahar Lal Nehru, made a whirlwind tour of the country and carried the message of the Congress to every nook and corner. The election campaign demonstrated that in spite of the ruthlessness and severity of the measures adopted by the Government of Lord Willingdon, the Congress organisation had not collapsed ; almost every village had its Congress office or at least some resident Congress members. The results of the election were equally significant ; Congress achieved a great victory, greater perhaps than what even its supporters had expected. It obtained clear majorities in six provinces ; namely, U. P., Bihar, Orissa, C. P., Madras and Bombay. These were Hindu-majority provinces. In Assam, Bengal, and the N. W. F. P. though it was the largest single party, it constituted a minority. Its success in the N. W. F. P. was a notable achievement. In the two remaining Muslim majority provinces, namely, the Punjab and Sind, it fared rather badly. It is interesting and relevant to note that the Muslim League did not achieve any great success in the 1937 elections ; it could secure only 51 seats out of a total of 482 seats reserved for the Muslims in the whole of British India. Congress Muslims contested 58 seats and won 26. In the Punjab the Unionist party which was a coalition of Muslim, Hindu, and Sikh agricultural interests won 106 out of 175 seats. This party, though dominated by the Muslims, was not subject to the control of the Muslim League. In Bengal there were three Muslim parties, the Muslim League (40 members), the Independents (41) and Praja Party (35). These figures show that in 1937 the Muslim League had not acquired the same influence with the Muslim masses as the Congress had with the Hindus, and as it acquired a few years later. At that time the League was stronger in the Hindu majority provinces than in the Muslim majority provinces. It is also worth noting that while the Congressmen returned to the various provincial legislatures constituted a disciplined body, subject to the control of a strong central authority, popularly known as the Congress High Command, the Muslim members (except the Congress Muslims who were returned on the Congress ticket) had no similar cohesion and discipline. The control and authority of the Muslim league developed a few years later.

Two other facts about the elections must be noted. Firstly,

the Liberals were routed in the elections. In Madras the Justice party which had controlled the legislature since 1922 suffered a great defeat; it could secure only 21 seats as against 159 of the Congress in the lower house. Secondly, the Congress had contested the elections not to *work* the Act but to *combat* it. It had rejected the Act, and so there was no question of working it in a spirit of cooperation with the British Government. The Muslim League and other parties had adopted a different attitude; they did not seek to destroy it but to utilise the opportunities it offered for what they were worth. This difference of approach had an important consequence which will become clear presently.

**Controversy over Office-Acceptance.**— The remarkable success of the Congress in the elections created the problem as to how the majorities in the provincial legislatures were to be used to the best advantage. There were two schools of thought. One of them led by C. Rajagopalachari, Sardar Patel and Rajendra Prasad took the view that office should be accepted under the new constitution with a view to the strengthening of the position of the Congress in the struggle for freedom. The other school led by Pandit Jawahar Lal Nehru and Subhash Chandra Bose held the opinion that acceptance of office would cool the revolutionary ardour of the Congress and betray the cause the Congress had espoused, and that the Congress majorities could best be used to make it impossible for the other parties to form ministries. The controversy between the opposed views was keen. Mahatma Gandhi intervened in it and suggested a compromise formula which was acceptable to both the groups and was made the basis of the resolution passed by the All India Congress Committee on the 13th of March 1937. It authorised and permitted 'acceptance of office in the provinces where Congress commands a majority in the legislature, provided that Ministerships shall not be accepted, unless the leader of the Congress party in the Legislature is satisfied and able to state publicly that the Governor will not use his special powers of interference or set aside the advice of ministers in regard to their constitutional activities.' In short, the Congress demand was that the Governors should act more or less like constitutional heads in relation to their popular ministers and act on their advice even in matters where they were empowered by the Act to act in their discretion or exercise their individual judgment.

The Governors refused to give any such assurance to the leaders of the Congress majority parties in Bombay, Madras, U. P., Bihar, Orissa, and the C. P., when the latter were invited by them to form the ministries in the different provinces. They took the view that they could not voluntarily divest themselves of the powers conferred upon them by the Act; it could not be done without an amendment of the Constitution. Mahatma Gandhi thought otherwise, and held that the Governors could easily develop the convention of not using their special powers. The whole history of constitutional development in Great Britain illustrates the point that powers vested in an authority become obsolete through sheer disuse.

The leaders of the non-Congress coalition majorities in the Punjab, Bengal, Sind, Assam and N. W. F. P. did not demand any such assurance, and popular ministries began functioning there with effect from the 1st of April, 1937. In the other Provinces where Congress commanded a majority in the legislature the Governors selected their ministers from minority parties who were willing to work the constitution. These ministries came to be known as Interim Ministries, for it was evident that they could not function on a permanent basis. They could never hope to secure the confidence of the Provincial Legislative Assembly whose meeting had to be convened within six months. At the most they could remain in office for six months.

**Congress Decision to Accept Office.**— The appointment of the Interim Ministers was a stop-gap arrangement. The plan of allowing them to function by deferring the convening of the legislative assemblies provided an interval during which both the Congress and the British Government developed and clarified their respective view-points. The long drawn out controversy came to an end with a very conciliatory broadcast speech on June 21 by the Governor General, Lord Linlithgow in which he made it clear that the 'special responsibilities of the Governor did not entitle him to intervene at random in the administration of the province, and that the Governor was ordinarily to be guided by the advice of Ministers in all matters falling within the ministerial field, including the position of minorities, the services, etc., and that the Ministers will be responsible not to the British Parliament, but to the Provincial Legislatures. He further added that the Ministers had

the duty of advising the Governors over the whole range of the executive government within the ministerial field, including the area of his responsibilities and that in all matters in which he is not specially required to exercise his individual judgment, it would be mandatory upon the Governor to accept the advice of his Ministers. He also pledged himself to strive untiringly for the full and final establishment in India of the principles of parliamentary government. Although the Viceroy's speech did not surrender any constitutional ground, it was highly conciliatory and was accepted as such by the Congress Working Committee. In its meeting held at Wardha on July 7, 1937, the Working Committee passed a resolution from which the following extract is given : 'The Committee feels, however, that the situation created as a result of the circumstances and events that have since occurred warrants the belief that it will not be easy for the Governors to use their special powers. The Committee has..... resolved that Congressmen be permitted to accept office where they may be invited thereto, but it desires to make it clear that the office has to be accepted and utilised for the purpose of working it in accordance with the lines laid down in the Congress Election Manifesto and to further in every way the Congress policy of combating the new Act on the one hand, and of prosecuting the constructive programme on the other.'

This resolution was revolutionary in nature ; it marked the beginning of a new phase of Congress activities. Till then the Congress had been a fighting organisation, bending all its energies to the end of emancipating the country from bondage to foreign rule ; now, for the first time, it undertook the responsibility for carrying on the administration in six provinces. This should not be taken to mean that it gave up the fight for national freedom ; the resolution of the Working Committee makes it clear that office was accepted with the dual purpose of furthering the constructive programme of the Congress and combating the Act. The whole episode reveals the political acumen and insight of Mahatma Gandhi, the author of the 'assurance clause'. Though no formal assurance was given by the Governors, yet the whole controversy resulted in a great widening of the bounds of the constitution. The shadow of responsible government which was all that the Act of 1935 can be said to have conceded was converted into something very much like real popular or self-government.

**No Coalition with the League.**— The decision to permit Congressmen to accept office raised a very vital question ; namely, whether or not to join other groups to form coalition ministries in provinces like Bengal, Assam, and the Punjab. There was also the question of taking in members of the Muslim League as ministers in Congress majority provinces like the U. P. and Bihar. It was considered desirable to associate as many parties as possible in the work of administration, and there was no objection on principle to coalition ministries. Nevertheless, the Congress decided against coalition ministries. The reason was that the Congress had decided to accept office with a two-fold purpose ; namely, to carry through the legislatures constructive measures of reform, and to carry on the struggle for independence. It was expected that in the execution of this two-fold objective there would be conflict with the representatives of British Imperialism— with the Governors, the superior Services, and also with vested interests in land and industry over agrarian and labour questions. If non-Congress elements were admitted into the provincial cabinets, it was feared that they would tone down the Congress programme of social legislation, or at any rate, obstruct and delay it. Alliance with the League would not make the Congress stronger ; it might on the other hand weaken it. 'There might even be intrigues with the Governor over the heads of the other ministers. A joint front against British authority was essential. Any breach in it would be harmful to our cause. There would have been no binding cement, no common loyalty, no united objective, and individual ministers would have looked and pulled in different directions.\*' In short, it was felt that Congress would be stronger if it stood alone. It however asked the Leaguers to become members of the Congress and work with it for the independence of India and the amelioration of the masses.

The decision to exclude non-Congressmen from the cabinets, however sound and logical, had disastrous consequences. It caused serious disappointment to aspirants for ministerships in the Muslim League and led to a feeling of isolation and grievance among them. Mr. Jinnah began to say that the Muslims could expect neither justice nor fairplay under the Congress Government. The League drifted more and more away from the Congress and the communal

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\* Jawahar Lal Nehru : *The Discovery of India*, page 312.

problem became accentuated. The communal tension of the following years leading to the League demand for Pakistan was thus the direct outcome of the exclusion of Muslim Leaguers from Congress Cabinets.

**Working of Provincial Autonomy.**— Soon after the Congress decision to accept office the Interim Ministries resigned in the Congress-majority provinces and Congress took office in July 1937. A Congress ministry was installed in the N. W. F. P. a few months later. The real working of the new constitution in these provinces may be said to have begun with the formation of Congress ministries. They remained in the saddle till October 1939, when they tendered their resignations in eight provinces on the war issue. During these twenty-eight months provincial executives functioned more smoothly than was expected. There was the minimum of interference by the Governors with the work of ministers ; instances where the Governors invoked their special responsibilities were rare. A great majority of the bills passed by the legislatures were assented to by the Governors, only four being vetoed. The remaining were returned with proposed amendments which were accepted. The Governors did not use their powers of legislation. Most Congressmen account for this smooth working in terms of the 'gentleman's agreement' reached between the British Government and the Congress. We have the testimony of Mahatma Gandhi that the Governors played the game. The Indian Civil Service also gave full support to the new ministers in the execution of their schemes. The prediction that the bureaucracy would not offer cooperation in the working of provincial autonomy did not turn out to be true. On the other side, the Ministers also acted with restraint and did not raise issues merely for the sake of creating deadlocks. This should not be interpreted to mean that the Congress Ministers refrained from pursuing their policies simply because they were afraid of obstruction from the Governors. On some occasions there were differences of opinion between the Ministers and the Governor ; e. g., on the question of release of political prisoners in the U. P. and Bihar which led to the resignations of the former. The differences were however resolved, and the Ministers went back to their offices. In Orissa also there was a crisis, but it was solved. In the field of legislation a great majority of bills passed by the

provincial legislatures received the assent of the Governors. Only four were vetoed.

It is not necessary to refer to the way in which Congress ministries handled the problem of the maintenance of law and order which was made difficult by the recrudescence of communal troubles and discontent on the part of agrarian workers and industrial labour, and to the achievements of the Congress in the fields of education, temperance, agrarian reform, etc. We would content ourselves with quoting Coupland. He writes as under : 'Taken as a whole the record of its Ministers was one in which the Congress could take a reasonable pride. Its leaders had shown that they could act as well as talk, administer as well as agitate, and among them and their followers there was a genuine ardour for social reform.\*'

Reference must however be made to the effect produced by the establishment of Congress Governments on the masses. Pandit Jawahar Lal Nehru describes it in the following words : 'But the psychological change was enormous and an electric current seemed to run through the countryside. The change was noticeable more in the rural areas than in the cities, though in the industrial centres the industrial workers reacted in the same way. There was a sense of immense relief as of the lifting of a weight which had been oppressing the people ; there was a release of long suppressed mass energy which was evident everywhere. The fear of the police and secret service agent vanished for a while at least and even the poorest peasant added to his feeling of self-respect and self-reliance. For the first time he felt that he counted and could not be ignored.'†

It may be added that there were no similar manifestations of a new life in non-Congress governed provinces like the Punjab and Bengal where 'there was no relaxation of the police and the secret service raj', and no release of political prisoners. The Governor of the Punjab informed the Governor General that peace and tranquillity were likely to be disturbed in his province if political prisoners were released, without even caring to consult his Chief Minister. In Bengal thousands of persons were detained in jails without trial. Another important point of difference between the Congress and the non-Congress governed provinces deserves notice. Though

\* Coupland : *India, A Restatement*, pages 160-62.

† Jawahar Lal Nehru : *The Discovery of India*, page 313.

the Governor presided over the meetings of his Council of Ministers in all the provinces, in the former these meetings were mostly formal. The ministers usually met earlier under the Chief Minister and decided the line of action to be taken before they met under the chairmanship of the Governor. In the latter the practice did not develop ; the meetings of the Councils of Ministers under the presidentship of the Governor were not formal ; vital decisions were taken in them. The ministers were glad to avail themselves of the experience and advice of the Governor. There was thus a good deal of difference in the working of the Act of 1935 in Congress and non-Congress governed provinces.

**Resignation of Congress Ministries.**— This association of Congress with the work of administration which was productive of much good came to an end with the resignation of ministries in Congress-majority provinces in October 1939 on the war issue. The causes and repercussions of this step will be stated in the next chapter. Here only this much be stated that their resignations put an end to responsible government in eight provinces where Sec. 93 of the Act was applied and the Governors assumed all the powers of government in their own hands. In two provinces however non-Congress coalition ministries were subsequently formed— in Orissa towards the end of 1941, and in N. W. F. P. in the spring of 1943. In these provinces and also in Assam, Bengal, the Punjab and Sind the form of parliamentary responsible government prevailed, though the spirit of responsible government did not exist. The Governor was the pivot of administration, the legislative councils could not enforce responsibility on the ministries because of the absence in them of closely knit and disciplined parties. In the remaining six provinces Section 93 of the Act was applied and the autocratic rule of the Governor imposed. Responsible Government existed neither in form nor in substance. This condition prevailed till the elections of 1946 as a result of which popular governments were reinstated under vastly different conditions. The course of events between the resignation of Congress Governments in 1939 and the resumption of power by Congress in 1946 in eight provinces is described in the next chapter.

**Coupland's Criticism of the Working of Provincial Autonomy.**— It would have become abundantly clear that the real defect of the Government of India Act from the Indian point of view lay in

what it sought to withhold from the people in the shape of the special powers and responsibilities of the Governor in the provincial sphere. This sting was taken away as a result of the gentleman's agreement reached between the Congress and the British Government. The Governors did not use their powers of interference and generally accepted the advice of their popular ministers. In other words, popular or responsible government was realised to a great extent in the provinces where the Congress party formed the government. But Professor Coupland, to whose estimation of the achievements of the Congress Ministers reference has been made in the preceding section, holds the view that the principles of both provincial autonomy and responsible parliamentary government were violated by the 'unitarian policy of Congress Centre'.\* The control exercised by the Congress High Command over Congress ministries in the provinces was a reality; the refusal of the leaders of the Congress parties to accept office in March 1937 unless the Governors gave an assurance of the type asked for, their willingness to form governments three months later, and their resignation in 1939 on a question not at all connected with the exercise of their powers by the Governors in 1939: all these are clear proof of the 'unitarian policy of the Congress Centre'. It may also be conceded that this control was far in excess of what is exercised by the national party executive over its parliamentary party by the British Labour Party in Great Britain. But this was necessary in the conditions prevailing in our country; it was mainly responsible for the success achieved by the Congress Ministries. It was absolutely indispensable for maintaining the inner discipline and integrity of the Congress as a whole and preventing the growth of narrow provincialism. But it was not a negation of provincial autonomy or of parliamentary government. The Congress High Command laid down general policies for the Congress ministries, but left the problem of internal administration to the ministries. To have developed common and uniform policies in the various Congress governed provinces cannot be regarded as a departure from the principles of provincial autonomy and parliamentary government.

\* Coupland: *Ibid*, page 161.

# PART IV

## TRANSFER OF POWER

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### CHAPTER XIV

#### WORLD WAR II AND THE DEADLOCK

**Introductory.**— Like its predecessor, the World War II which broke out in September, 1939, had a tremendous impact on the political situation in India. Its immediate effect was the resignation of the Congress ministries in eight provinces and the substitution of Governor's autocratic rule in them in place of responsible government. A few words of explanation as to why the Congress ministries tendered their resignations in them seem to be necessary.

**Congress Attitude to War.**— Though the Indian National Congress was definitely opposed to fascism, nazism, and Japanese militarism, and had consistently condemned the British policy of appeasing Hitler and Mussolini, the Working Committee passed a resolution in August, 1939, shortly before the War commenced in Europe, in which it affirmed its opposition to all types of fascist and nazi aggression, expressed its sympathies with the peoples who stood for freedom and democracy, and declared its unwillingness to associate itself with the British Government in any way in the prosecution of the war. The cause of this hostile attitude was the way in which, in utter disregard of the demand of the Congress that India should not be committed to any war without the consent of her people or their representatives and that no Indian troops should be sent abroad without the consent of the central legislature, the Government of India had despatched troops to Egypt, Aden and Singapore 'without vote, debate or sanction from any representatives of the Indian people. A white hand had moved these Indian soldiers like pawns across the chess-board of world politics in a quarrel not their own.'\* Lord Linlithgow had asked for special authority for the purpose of

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\* Brailsford : *Subject India*, page 45.

coordinating the activities of the central and provincial governments in the event of war. The Government of India Amendment Act of 1939 empowered the Central Government to give directions to the provincial governments as to the manner in which the latter were to exercise their executive authority and to make laws conferring executive authority on the central government and its officers in respect of provincial subjects. All this was done without consulting provincial legislatures and ministers, though it struck at the very root of provincial autonomy and rendered it a farce in case of war. The Amending Act made the provincial governments helpless agents of Imperialism. As a protest against the way in which imperial authorities were treating India, the Congress directed its members in the Central Assembly not to attend its next sessions. In the course of the resolution passed in August, the Working Committee declared : 'India cannot associate herself with such a government or be asked to give her resources for democratic freedom which is denied to her and which is likely to be betrayed.'

When Lord Linlithgow made India a belligerent on the side of Great Britain and her allies without consulting her leaders and chosen representatives in the various legislatures, the Working Committee met and passed a long resolution on September 14, 1939. In it the Committee condemned the Nazi aggression in Poland and expressed its eagerness to help in the successful prosecution of the war, *if it were convinced that the issue was democracy and a world order based on democracy*. But if the war was being fought for imperialist purposes, the Committee declared that it would have nothing to do with it and would necessarily oppose any decision imposed upon the country by the Government. The Committee asked the British Government to declare 'in unequivocal terms what their war aims are in regard to democracy and imperialism and the new order that is envisaged, in particular, how these aims are going to apply to India and to be given effect to in the present.' Remembering that, despite her whole-hearted support in the First World War India had not been generously treated after the war, the Working Committee made it plain that mere promises for the future would not satisfy them, unless something was done in the immediate present as an earnest that the British Government meant to honour its pledge. The one and only thing which would have

convinced the Indian people of the sincerity of the Government was the establishment of a national government at the Centre.

The British Government avoided stating their war aims plainly and unequivocally. The British Prime Minister declared that for the time being his war aim was self-preservation. Another cabinet minister said that Britain's war aim was to win the war. In response to India's demand for the establishment of a national government in the country all that the Viceroy did was to invite more than fifty leaders for discussion and sounding public opinion in the country. After these talks he issued a statement on October 17, in which he repeated the Prime Minister's declaration that England sought no gain for herself out of the war, but was engaged in it for establishing a better international system and lasting peace. In regard to the Indian demand for freedom he merely repeated what Lord Irwin had said several years ago that the establishment of Dominion Status was the goal of British policy in India. He added that in order to realise it the British Government would be ready to enter into consultations with the representatives of the 'several communities, parties and interests in India, and with the Indian Princes with a view to receiving their aid and cooperation in the framing of such modifications of the Act of 1935 as may be desirable'. As for immediate action he proposed the establishment of an Advisory Council, representing all India, for the purpose of associating public opinion with the prosecution of the war. This statement failed to satisfy the Working Committee. On October 22, it decided that it could not support the British Government and called upon the Congress ministries to tender their resignations.

The Working Committee was compelled to resort to this extreme step because not only did the Viceroy's statement of October 17 make it crystal clear that the British Government was determined not to part with power, but also because the cooperation it sought from India was not the cooperation of comrades and equals, but that of a slave people who must do what they are bidden to do. Moreover, the Amendment Act of 1939 concentrated the whole power in the hands of the Governor General, thereby making the position of the ministers in the provinces very difficult. They had either to submit to continuous interference on the part of the Governor or to come into conflict with him at almost every point.

There was thus no option for the ministers but to resign.

**The League Attitude.**— Before continuing the narration of events further it is necessary to add a few words about the attitude of the League and the complications it gave rise to. Its Working Committee met and expressed its attitude towards the War in a resolution passed on September 18. It expressed deep sympathy with the Allied cause and promised full support to the Government in its war efforts provided full justice and fairplay were given to the Muslims in Congress governed provinces, and an assurance was forthcoming that no constitutional advance would be made and no new constitution framed without the consent and approval of the Muslim League.

The League Working Committee did not definitely reject the Viceroy's statement of October 17, but adopted the policy of sitting on the fence. It repeated its offer of full support and cooperation on behalf of the Indian Muslims, provided it was given full satisfaction on the two points mentioned in its resolution of September 18.

**Congress Resignations and After.**— The resignations of Congress ministries in the various provinces on the war issue were much regretted in certain circles. Even within the Congress there were persons who did not approve of the course. Its effects were unfortunate in several respects. In the first place, the step meant a reversal to the unchecked autocracy of the old days and an increase in the miseries and sufferings of the people. In the words of Jawahar Lal Nehru 'the police felt freer to revert to old habits, knowing full well that they would be supported and protected from above even when they misbehaved.' In the second place, it brought about a great change in the attitude of the Governor-General. So long as the Congress was in office, it was necessary for him to woo it so far as the war effort was concerned ; he could easily ignore it after the resignations. According to Shri V. P. Menon, it greatly reduced the bargaining power of the Congress. Lastly, it greatly strengthened the position of the Muslim League. The Viceroy began to lean more and more on its support. For all practical purposes Jinnah was given a veto on further constitutional progress and he made the fullest use of it to consolidate the League position. The League was very happy over the resignations and celebrated the Deliverance Day on December 22. The growth in the power and influence of

the League began after the resignations. But for the resignation of the Congress Jinnah and the League would never have attained the position they did.\*

Early in 1940 the Viceroy made a speech in the course of which on the one side he emphasised the necessity of the inclusion of the States in any future constitutional scheme and laid stress on the claims of the Muslims and the Scheduled Classes, and on the other side appealed to the leaders of all political parties to get together and reach some agreement and thus help to end the deadlock. Gandhiji met the Viceroy after the speech and had a long talk with him lasting for over three hours. The two understood the position of each other, but could not arrive at any agreement. The differences between the Congress and the Government could not be bridged. It was also difficult to accommodate the divergent claims put forth by the Congress, the Muslim League, the Scheduled Castes, and the Princes. The deadlock was thus complete.

As time passed and conditions grew worse, the demand for some sort of action became imperative. The Congress at the Ramgarh session was driven to decide that resort to civil disobedience was the only course left to it. It asked the people to get ready for it.

**Poona Resolution of Conditional Help in War.**— Though the Congress asked the people to prepare themselves for starting civil disobedience to remedy the situation which was getting worse, it did not start any preparation to it. Meanwhile the war situation in Europe greatly deteriorated. Germany brought the whole of the western coast of Norway under her control and overran Denmark, Holland, and Belgium. France also capitulated and made separate peace with Germany. England stood in great and immediate peril. The Working Committee met at Poona and moved by the fate of Norway, Denmark, etc., and by the danger to Britain, passed a resolution on July 7, 1940, offering help to the British Government in the prosecution of war on the condition that it recognised India's right to complete independence *after the war*, and set up a national government in India composed of all parties in the country and responsible to the Central Assembly minus its official and nominated non-official members. This was a toned down and moderate

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\* Menon : *op. cit.*, page 152.

demand and required no overhauling of the constitutional machinery. The Governor General and the Commander-in-Chief, and the whole structure of the civil and military administration were to remain as they were; only the representatives of the people were to be associated with the Government with a view to the creation of a new spirit and a new outlook among the people which would make it easier for the Government to enlist their energies and enthusiasm in the prosecution of the war effort. Even the *Statesman* saw nothing dangerous or impracticable in this offer and opined that its rejection would 'savour of timid and disastrous statesmanship unsuited to the times.' The reply of the Government of India to this offer was contained in a statement issued by the Viceroy on August 8, 1940. This is known as the August Offer.

**The August Offer.**— The Viceroy's statement, which was made with the full concurrence of His Majesty's Government in London headed by Mr. Churchill, was in some ways a great improvement upon previous declarations. Regarding the intentions of His Majesty's Government for the constitutional future of India the Viceroy said: 'The second point of general interest is the machinery for building within the British Commonwealth of Nations a new constitutional scheme when the time comes. There has been very strong insistence that the framing of that scheme should be primarily the responsibility of Indians themselves, and should originate from Indian conceptions of the social, economic and political structure of Indian life. His Majesty's Government are in sympathy with that desire, and wish me to see it given the fullest practical expression subject to the due fulfilment of the obligations which Great Britain's long connection with India has imposed upon her and for which His Majesty's Government cannot divest themselves of responsibility.' This is a clear renewal of the promise of Dominion Status.

More significant than this was the promise to set up a constitution making body after the war. He said: 'His Majesty's Government authorise me to declare that they will most readily assent to the setting up after the conclusion of the war with the least possible delay of a body representative of the principal elements in India's national life in order to devise the framework of the new constitution and they will lend every aid in their power to hasten decisions on

all relevant matters to the utmost degree.' This amounts to the acceptance of the Indian demand for a Constituent Assembly which had been put forth by the Indian National Congress. The Viceroy's statement could also be interpreted as a promise to set up another Round Table Conference, which would not have satisfied nationalist opinion in the country. We may however take it in a broader light. It is thus clear that the August Offer promised the establishment of Dominion Status as soon as possible after the termination of hostilities in Europe and conceded the demand of the Indians to frame their own constitution. The claim of the British Parliament to determine and control the constitutional advance of India was thus abrogated.

But the offer was hedged in by two significant provisos. Firstly, British obligations in such matters as defence, treaties with the Princes, rights of the public services, were to be fulfilled. Secondly, the interests of the minorities were to be safeguarded. But the greatest defect of the statement lay in the following words: 'It goes without saying that they (the British Government) could not contemplate the transfer of their present responsibilities for the peace and welfare of India to any system of government whose authority is directly denied by large and powerful elements in India's national life. Nor could they be parties to the coercion of such elements into submission to such a government.'

Put in simpler language this great concern for the welfare of minorities like the Muslims signified only one thing; they were given a veto power over any constitution which Congress might frame. This acquires great significance when one remembers the growing hostility of the Muslim League to the Congress which found expression in the observance of the 'Deliverance Day' when the Congress Ministries resigned in November 1939, and in its demand for Pakistan. In this connection one must never forget the way in which as a result of the unholy alliance between the British die-hards and the minorities in England in 1939 the communal question was pushed into the forefront during the second session of the R. T. C., and made to sidetrack the constitutional issue completely.

As regards the Congress demand for the establishment of a national government in the country responsible to the legislature, the Viceroy declared that he would enlarge his Executive Council by the

inclusion of a number of representative Indians in it, and also, establish a War Advisory Council containing representatives of Indian States and other elements in the national life of the country and meeting at regular intervals. He hoped that all parties and communities would join the enlarged Executive Council and the War Advisory Council, cooperate in the war effort and thereby pave the way for the attainment by India of a free and equal partnership in the British Commonwealth. It may be noted that for the first time the Viceroy spoke about free and equal partnership of India in the British Commonwealth. This also was an important advance upon previous attitude and ideas.

The Congress Working Committee considered this statement in its meeting held at Wardha from the 18th to the 23rd of August, and in spite of the offer of Dominion Status at the end of the war and of the right to determine the new constitution, it decided to reject it as it fell too short of its demand for the transfer of power in the immediate present. The proposal to expand the Executive Council by the inclusion of a few Indians and to establish the War Advisory Council could not be construed as coming anywhere near to the Congress demand for the setting up of a national government responsible to the Assembly. The great concern for the minorities was nothing more than a cloak to use the communal issue as a pretext for withholding the transfer of power to the people. The assertion that his Majesty's Government did not contemplate the transfer of responsibility for the peace and welfare of India to any government whose authority was denied by large and powerful elements in the national life of the country was tantamount to placing in the hands of the Muslim League and the Princes the power of veto over the constitutional advance of the country. It was nothing short of an incitement to the minorities to adopt an intransigent attitude in their dealings with the Congress. The statement and the speeches made in connection with it made it absolutely clear to the Congress that behind all talk of Dominion Status after the war, etc., there was the fixed determination of the British Government to hold on to its control over Indian affairs for as long as possible. Mr. Churchill's declaration that the Atlantic Charter did not apply to India and that he had not become the Prime Minister to preside over the liquidation of the Empire left no room for doubt on this

issue. This naturally led to a widening of the gulf between Great Britain and the Congress. Congress was much pained to see that the Communal question was being made an insuperable obstacle to the constitutional advance of the country.

In spite of the fact that the Viceregal announcement and Amery's clarification constituted a considerable advance towards the viewpoint taken by the League and amounted to the acceptance of the League demand that there would be no constitutional progress without its consent and approval, the Working Committee of the League rejected the August Offer and refused to join the expanded Executive Council of the Viceroy because the latter did not accept its demand for half of the additional seats in the Council and its demand for the right of veto over Congress entry into the Executive Council at a later date. The Mahasabha also rejected the offer, because its demands (which were not acceptable to the League) were not conceded by the Viceroy. The Liberals, the Sikhs and the Scheduled Castes were the only parties which did not reject the August Offer. The Viceroy abandoned the idea of expanding his Executive Council for the time being.

**Individual Civil Disobedience.**— The most unsatisfactory nature of the response of the British Government to the Congress offer of help and its determination to cling to power for as long as possible made it impossible for the Congress to remain a passive spectator of the deepening crisis in the country. There was no other course open to it but to resort to civil disobedience to enter its emphatic protest against the way in which the freedom of the Indian people was being crushed by the Government and to save itself from extinction. The Congress therefore invited Mahatmaji to lead the movement. As he was too noble to strike the British Government hard when it was engaged in a life-and-death struggle, and merely wanted to register India's moral protest against its attitude and draw the attention of the world at large to the right of the Indian people to freedom and their determination to win it, he made the civil disobedience movement merely symbolic in character. This object was achieved by carefully avoiding all mass upheavals and restricting it to selected individuals only who satisfied certain tests. Mahatmaji himself selected the individuals who were to offer *satyagraha* and the issue on which it was to be done. This was the assertion of the

right of every individual to freedom of speech. The honour of initiating individual civil disobedience was conferred upon Acharya Vinoba Bhave. He gave notice to the officials of his intention to address the people and ask them not to help the Government in the prosecution of its war effort in any way. He was arrested and sent to jail after having been allowed to speak a few times. But other individuals were not allowed to address the people and were taken into custody even before leaving their homes. The top-ranking leaders, namely, members of the Working Committee and ex-ministers, were chosen first. The circle was gradually extended by the inclusion of members of central and provincial legislatures, members of provincial, district and town congress committees. It is estimated that in all between twenty-five to thirty thousand men and women were sent to jail for asserting their right to freedom of speech in the midst of the war alleged to have been fought for the sake of freedom. Many people might fail to understand and appreciate this peculiar movement of civil disobedience where a deliberate attempt was made to avoid embarrassment to the government. This was Mahatma's way of dealing with the enemy in the midst of a struggle. He did not want to hurt or injure the cause of the allied nations; his purpose was to make England and the world realize the supreme necessity of making India free not only for her sake but also for their own good. He himself remained out to guide the movement and keep it within limits.

**Executive Council Expanded.**— While the symbolic civil disobedience movement was going on in the country, the Viceroy expanded his Executive Council by appointing to it five Indians chosen from outside the Congress and League folds. It thus came to contain eight Indians out of a total membership of thirteen. The vital departments—Defence, Home and Finance—however remained in the hands of British members. He also set up the National Defence Council in terms of the announcement of August 8. These steps did not cut much ice with the Congress; the deadlock between it and the Government continued. There was, however, one significant development. For reasons which remain unknown the Government decided to release Congressmen convicted in connection with the Civil Disobedience movement. They were set at liberty early in December. To some extent the step might have been due to

the pressure of Indian members of the Viceroy's expanded Council.

This jail delivery had no effect on Mahatma Gandhi. He said that it did not evoke a single responsive or appreciative chord in him. He criticised the Government for setting at liberty those who deliberately courted imprisonment while refusing to release the detainees and other prisoners who were detained without trial. He therefore did not suspend the individual civil disobedience ; nay, he said that to stop the movement, symbolic though it was, would have been to deny the whole policy of the Congress at a crucial moment. C. Rajagopalachari, however, was of a different view, and favoured the suspension of the movement as political strategy. Mahatmaji wanted the A. I. C. C. to decide whether or not to suspend the movement. Pending the decision, he advised the released Congressmen not to offer satyagraha immediately after release ; to do so would have been indecent hurry.

**Suspension of Civil Disobedience.**— A few days after the jail delivery, but long before the A. I. C. C. met to consider the situation, there were developments in the war situation which changed the position fundamentally. Japan entered the war with an attack on Pearl Harbour on December 7, 1941. The Japanese armies swept across Phillipines, Indonesia, Indo-China and Malaya. By the end of February the fall of Burma looked imminent and an invasion of India highly probable. The failure of the British to stop the Japanese advance in Singapore and Malaya and Burma convinced Indians that they must not depend upon the Government for the defence of the country. Congress therefore suspended the Civil Disobedience movement and advised all Congressmen to remain at their posts, allay panic among the people and render them all the help they could.

**The Cripps Mission and After.**— The refusal of the Indian National Congress to support the war effort inspite of its confirmed opposition to Fascism, Nazism and Japanese militarism and its moral protest against the refusal of the British Government to set up in India a national government were not without some effect on public opinion in England, the U. S. A. and elsewhere. There were references to the Indian problem in the British Parliament ; several members urged the Government to treat it as urgent and mobilise the full resources of India by offering her Dominion Status and

inviting an Indian representative to sit in the War Cabinet in England. Marshall and Madame Chiang Kai Shek, who paid a visit to India, in February 1942, urged the Government of India in a farewell message to win India's full support in the struggle against Japan. President Roosevelt also exerted some pressure on Mr. Winston Churchill to ease the Indian situation. He said that the Atlantic Charter was applicable to the whole world. Even Dr. Evatt, the Foreign Minister of Australia, urged self-government for India with a view to securing her full support in the war effort. The weight of all these appeals was reinforced by the spectacular success of Japan in South-East Asia, by the fall of Singapore and the serious threat to Burma. There was a great danger of invasion of India herself. All these factors made the British Government realise the necessity of solving the deadlock in India and mobilising all her resources to meet the menace of the Japanese invasion. Accordingly, Mr. Churchill made an announcement in Parliament on March 11, 1942, that the War Cabinet had decided to depute a member of the Cabinet to visit India with the proposals of His Majesty's Government for the solution of the Indian problem. Sir Stafford Cripps was the person chosen for the task of negotiating a settlement with the Congress. He had returned from Moscow after having successfully completed his mission in Russia and was made a member of the British Cabinet as Lord Privy Seal. He was a socialist and had already visited India twice and was known to be a personal friend of Pt. Jawahar Lal Nehru and other Congress leaders. His appointment was much welcomed in India. He reached Delhi on March 22, and after holding consultations with the Viceroy and members of his Executive Council began talks with leaders of Indian political parties.

The proposals which Sir Stafford Cripps brought with him on behalf of His Majesty's Government were put in the form of a Draft Declaration which is reproduced below in full. It ran as under:—

'His Majesty's Government having considered the anxieties expressed in this country and in India as to the fulfilment of promises made in regard to the future of India, have decided to lay down in precise and clear terms the steps which they propose shall be taken for the earliest possible realisation of self-government in India. The object is the creation of a new Indian Union which shall constitute a Dominion associated with the United Kingdom and other Dominions by a common allegiance to the Crown but equal to them in every respect, and

in no way subordinate in any aspect of its domestic and external affairs.

'His Majesty's Government therefore make the following declaration :

(a) Immediately upon the cessation of hostilities, steps shall be taken to set up in India in manner prescribed hereafter an elected body charged with the task of framing a new Constitution for India.

(b) Provision shall be made, as set out below, for participation of Indian States in the Constitution-making body.

(c) His Majesty's Government undertake to accept and implement forthwith the constitution so framed subject only to :

(i) The right of any province of British India that is not prepared to accept the new constitution to retain its present constitutional position, provision being made for its subsequent accession if it so decides.

With such non-acceding provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new constitution giving them the same full status as the Indian Union and arrived at by a procedure analogous to that here laid down.

(ii) The signing of a treaty which shall be negotiated between His Majesty's Government and the Constitution-making Body. This treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands ; it will make provision, in accordance with undertakings given by His Majesty's Government, for the protection of racial and religious minorities ; but will not impose any restriction on the power of the Indian Union to decide in future its relationship to other member States of the British Commonwealth.

Whether or not an Indian State elects to adhere to the Constitution it will be necessary to negotiate a revision of its treaty arrangements so far as this may be required in the new situation.

(d) The Constitution-making Body shall be composed as follows : unless the leaders of Indian opinion in the principal communities agree upon some other form before the end of hostilities.

Immediately upon the result being known of provincial elections which will be necessary at the end of hostilities, the entire membership of the lower house of provincial legislatures shall as a single electoral college proceed to the election of the Constitution-making Body by the system of proportional representation. This new body shall be in number about one-tenth of the number of the electoral college.

Indian States shall be invited to appoint representatives in the same proportion as to their total population as in the case of representatives of British India as a whole, and with the same powers as British Indian members.

(e) During the critical period which now faces India and until the new constitution can be framed His Majesty's Government must inevitably bear the responsibility for and retain the control and direction of the defence of India as part of their world war effort, but the task of organising to the full the military,

moral and material resources of India must be the responsibility of the Government of India with the cooperation of the peoples of India. His Majesty's Government desire and invite the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth and of the United Nations. They thus will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future of India.'

The proposals brought by Sir Stafford Cripps can be divided into two distinct parts, one dealing with the future and the other with the present. The proposals dealing with the future were fairly elaborate and definite ; they marked an appreciable advance on the offer of August 8. They virtually conceded what nationalist India had been demanding for the last several years through its mouth-piece, the Indian National Congress. But the other part dealing with the present was vague and did not come anywhere near to what the Congress demanded. It should also be noted that the Cripps proposals conceded to the Muslim League the substance of its demand for Pakistan ; they gave to the provinces of British India the right of keeping out of the proposed Indian federation and to have a constitution of their own, if they so desired. They also contained a sop to the Indian Princes ; they were free to join or not to join the proposed Union and were given the right to send their representatives to the Constitution-making body without consulting their peoples. The Draft Declaration thus contained 'items palatable to different tastes'. They deserve to be analysed in some detail.

In the first place, in the Draft Declaration His Majesty's Government undertook to set up in India, immediately upon the cessation of hostilities an elected body for framing a new constitution for India. The Congress demand for a Constituent Assembly was thus fully conceded for the first time. In this respect the Cripps proposals were a distinct improvement upon the August Offer whose language was capable of a different interpretation also. Furthermore, these proposals had the great merit of leaving the task of making the new institutions solely to Indian hands. It should, however, be admitted that the manner in which this Constitution-making Body was to be set up left much to be desired ; the Congress could not easily accept the proposal to vest the right of choosing the representatives of the States in their rulers. In the second place, the Draft Declaration declared that the new constitution which the

Constitution-making Body was to frame was to be on the Dominion and federal bases. It was to bring into existence a new Indian Union which was to be associated with the United Kingdom and the Dominions of the British Empire by a common allegiance to the Crown, but was to be equal to them in every respect and in no way subordinate to Great Britain in any aspect of its domestic or external affairs. This conceded the substance of independence in so far as Dominion Status implies the right of secession from the Empire, and should have satisfied the Congress. Sir Stafford Cripps, while answering questions at a press conference, said that India would be completely free to remain within the British Commonwealth or go out of it, and could enter into treaty relations with any nation of the world. Though, it did not use the term 'independence', the reality was there. In this respect also, the Draft Declaration was an improvement upon the August Offer. In the third place, it asserted that all matters arising out of the complete transfer of power to the people of India were to be settled by means of a treaty to be negotiated between His Majesty's Government and the Constitution-making Body.

Broadcasting from Delhi on March 30, 1942, Sir Stafford Cripps said that the British Government and the British people desired the Indian peoples to have full self-government 'with a status as free in every respect as our own in Great Britain'; and further declared that all departments excepting Defence were to be transferred into the hands of the Indian members of the Viceroy's Executive Council, and that a representative of India was to be appointed to the War Cabinet and one to the Pacific Council of the United Nations. India was to appoint her own representative to the Peace Conference.

These were important gains which no responsible body could have been expected to throw away. Therefore there must have been some cogent reasons for the rejection of the Cripps offer by the Congress. Let us study them. In the first place, the Congress could never reconcile itself to the proposal that the Indian Princes should nominate the delegates to the Constituent Assembly assigned to the States. There was no provision in the scheme for their election by the States' subjects. This meant that there would be a solid bloc of about a third of the total strength of the Constituent

Assembly which would insist on shaping the new Constitution as the British vested interests would dictate ; i. e., in a very reactionary manner. This solid bloc would have pulled its weight in an anti-national direction at the time of negotiating a treaty with His Majesty's Government for the settlement of necessary matters. It is thus obvious that the proposal to invite the States to nominate their representatives to the Constituent Assembly vitiated the whole scheme ; it reduced the value and significance of the right to frame our constitution through a Constituent Assembly to a very large extent. In the second place, by giving the provinces the right to keep out of the Indian Union it minimised the chances of the success of the new constitution. To concede the demand for Pakistan in advance was extremely vicious ; it was to make the communal problem still more difficult of solution in the long run. The right of non-accession was given to the states also. 'The states as well as the provinces, would all join in the constitution making, would influence that constitution, and then could walk out of it ..... Reactionary elements, differing from each other in many ways, would unite to frustrate the evolution of a strong, progressive unified national state.\* The Working Committee very much deplored the encouragement the offer gave to the idea of separation : even though it itself resolved never to compel the people of any territorial unit to remain an integral part of the Indian Union against their declared and established wish.

Important and vital as are the considerations pointed out above, it was not because of them that the Congress rejected the Cripps offer. Had the negotiations it carried on for several days with Sir Stafford Cripps terminated satisfactorily, it would have accepted the offer and co-operated with the British Government in meeting the impending danger of a Japanese invasion in spite of these defects. But it found that the authorities in England and India were not willing or prepared to part with power in any real sense. The Draft Declaration contained the following words : 'During the critical period which now faces India and until the new constitution can be framed, His Majesty's Government must inevitably bear the responsibility for and retain control and direction of the defence of India as part of the world war effort ...' Judged by

\* Jawahar Lal Nehru, *Ibid*, page 390.

the criterion laid down by the Congress in its resolution passed soon after the declaration of War, namely, that 'the real test of any declaration is its application to the present', the British offer was most inadequate and unacceptable. The Congress position is very clearly and forcefully explained in the following resolution :

'Any proposal concerning the future of India must demand attention and scrutiny, but in to-day's grave crisis it is the present that counts and even the proposals for the future in so far as they affect the present. The Committee necessarily attached the greatest importance to this aspect of the question and on this ultimately depends what advice they should give to those who look to them for guidance. For this the present British War Cabinet's proposals are vague and altogether incomplete, and there appear to be no vital changes in the present structure contemplated. It has been made clear that the defence of India will in any event remain under British control. At any time Defence is a vital subject ; during war-time it is all important and covers almost every sphere of life and administration. To take away Defence from the sphere of responsibility at this stage is to reduce that responsibility to a farce and nullity, and to make it perfectly clear that India is not going to be free in any way and her Government is not going to function as a free and independent Government during the pendency of the war.

'The Committee would repeat that the essential and fundamental prerequisite for the assumption of responsibility by the Indian people in the present is their realisation as a fact that they are free and are in charge of maintaining and defending their freedom. What is most wanted is the enthusiastic response of the people, which cannot be evoked without the fullest trust in them and devolution of responsibility on them in the matter of Defence. It is only thus that even in this grave eleventh hour it may be possible to galvanise the people of India to rise to the height of the occasion. It is manifest that the present Government of India, as well as its Provincial agencies, are lacking in competence and are incapable of shouldering the burden of India's defence. It is only the people of India, through their popular representatives, who may shoulder this burden worthily. But that can only be done by present freedom and full responsibility being cast upon them. The Committee are, therefore, unable to accept the proposals put forward on behalf of the British War Cabinet.'

This was a reasonable and just position to take. The Congress could ask the people of India to shed their blood in the defence of their real and present freedom with hopes of an enthusiastic response ; its call for fight in defence of a freedom not yet theirs would have fallen on deaf ears. It is only mercenaries who can fight for the freedom of others ; it is only free people who can carry on a people's war. This psychology the British Government did not understand ; perhaps, they intentionally refused to do so. The Delhi talks thus broke down, not on any communal question as Sir

Stafford Cripps later on asserted, but on the question of Defence. The Congress demanded control over Defence on the plea that the war could be fought and won only on a popular basis. The British Government, however, did not trust the people ; even in the hour of dire necessity it did not agree to arm the people whom it had emasculated for generations.

Another question besides that of Defence on which the Delhi talks between the Congress and Sir Stafford Cripps broke down was that of the status of the Indian leaders if they join the Viceroy's Executive Council. Were they, as members, to be responsible to the Viceroy and the Secretary of State as hitherto, or to the elected representatives of the people in the legislature ? The Congress demand was that the Governor-General should become something like the constitutional head of the State, bound to accept the advice of his Council, and without the power of over-riding its decisions in any way. In short, the Congress wanted that the Council should be treated as a Cabinet. To this, however, the Government was not agreeable ; the authorities in England and India were never prepared to concede power to any National Government. So the talks broke down, and His Majesty's Government withdrew the offer. It may also be pointed out that the attitude of the British Government that the Cripps proposals were not open to amendment but were to be accepted or rejected as a whole was most unfortunate. It was also partially responsible for the failure of the negotiations.

The Cripps proposals were rejected not only by the Congress but also by every other party in India. Their grounds for rejecting them were mostly the same. The Muslim League rejected them because it thought that the freedom they gave to the provinces to stand out of the union was neither clear nor full to the extent demanded by it. It was suggested in certain quarters that the real cause of their rejection by the Congress was the uncompromising attitude of Gandhiji towards them. He had described the proposals as 'a post-dated cheque', to which some one else added the words 'on a failing bank'. That it was a post-dated cheque was certainly a fact ; that was its main shortcoming. But Gandhiji was not present during the subsequent negotiations and the Working Committee arrived at the decision to reject the scheme independent-

ly of him.

Another vital fact must be remembered in connection with the breakdown of the negotiations between Sir Stafford Cripps and the Congress. The breakdown came very suddenly, and at a time when the atmosphere was charged with a fair degree of optimism and nobody thought that the negotiations were about to fail. While here the Working Committee was busy considering the formula suggested by Col. Johnson of the U. S. A., in the U. S. A. Lord Halifax, the British Ambassador in that country and an ex-Governor General of India, made a speech strongly criticising the Congress. He said : 'If our best efforts fail the British Government would find itself obliged to do its own duty without the assistance or cooperation of the larger organised Indian parties. We have had no cooperation from the Indian National Congress, the largest and best organised political party in India.' He added that its claim to speak for the whole of India was hotly denied by other bodies of India. The significant thing is that whereas in India there was an atmosphere of hope and optimism, Lord Halifax talked of the failure of the Cripps Mission in America. There was a sudden change in the attitude of Sir Stafford Cripps three days after the speech of Lord Halifax. He wrote a sharp and recriminating letter to the Congress President on April 10, accusing Congress of the desire to dominate the minorities. This was far from the truth. It is also worth remembering that, though in the course of his first interview with the Congress President, Maulana Abul Kalam Azad, Sir Stafford had said that the relation of the Viceroy to the new national government to be formed in India would be the same as that of the British King to the British Cabinet, he recanted on the last day, seemingly under pressure from London. 'In Delhi it was well known that the Viceroy, Lord Linlithgow, and the high officials of the Civil Service were strongly opposed to a settlement and to a lessening of their powers. Much happened which was only vaguely known.\* It seems that His Majesty's Government presided over by Mr. Churchill did not send Sir Stafford Cripps to India with an honest and earnest desire to solve the deadlock ; the 'real thought was less the achievement of Indian freedom than of a *coup de main* in the propagandist art among our allies who contrasted American

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\* *Discovery of India*, page 396.

relations with the Philippines against British relations with India.'† Pandit Jawahar Lal also thought that the Cripps mission was nothing more than a propaganda stunt for American consumption. The speech delivered by Lord Halifax on April 7 referred to above lends support to the hypothesis. Even if this view that the Cripps mission was a propaganda affair is considered as uncharitable, it remains true that there was no understanding between Cripps and the War Cabinet and between Cripps and the Viceroy. Neither the War Cabinet nor the Viceroy was prepared to go as far as Cripps. Cripps backed out when he realised this.

**The Aftermath.**— The abrupt way in which Sir Stafford Cripps announced the breakdown of the negotiations, the speeches which he delivered after return to London and the untruths and half-truths which he piled up in explaining the failure of his mission not only redounded to his personal discredit, they also led to a worsening of the political situation in the country. Indians became more convinced than ever before that there was no genuine desire on the part of His Majesty's Government to part with power, and that there could be no amicable settlement with them. The sense of frustration grew rapidly. Meanwhile, the chances of a Japanese invasion were growing and there was a long line of starving Indian refugees pouring into the country from Burma with their tales of misery and woe. There was panic in Eastern Bengal where the Government contributed to the sorry plight of the people by destroying thousands of country-made river boats by means of which lakhs of people made their living and which were a principal means of transport in the province. Congress wanted to organise the people for self-defence against the impending Japanese invasion, but was not encouraged to do so. The Government wanted to treat the people in the old way as mere chattels who were to be allowed no initiative but were expected to carry out the wishes of the officers. Official policy in the whole of the country was directed to the suppression of normal political activities and to the tightening of official pressure. A number of prominent Congressmen were sent to jail. What to do under the circumstances became a vital question for the Congress. The A. I. C. C. met towards the end of April at Allahabad and expressed its deep resentment at the way Government was dealing

† Laski, quoted in *History of the Indian National Congress*, Volume II, page 331.

with India and asserted that it would never accept a position which involved 'our functioning as slaves of foreign authority'. It may be mentioned that at this meeting Shri C. Rajagopalachari proposed that the Muslim League demand for Pakistan be accepted in order to establish a united front which the British would be unable to resist. This proposal was rejected and this led to his withdrawal from the Congress shortly after.

At this stage when the country was feeling frustrated and desperate Gandhiji wrote a number of articles in the *Harijan* which gave a new direction to people's thoughts, or as often happens, gave shape to their vague ideas. Inaction at that critical stage and submission to all that was happening had become intolerable to him. The only way to meet that situation was for Indian freedom to be recognised and for a free India to meet aggression and invasion in cooperation with the allied nations. 'If this recognition was not forthcoming then some action must be taken to challenge the existing system and wake up the people from the lethargy that was paralysing them and making them easy prey to every kind of aggression.' Gandhiji felt inaction at that time and weak-kneed submission to the ways of the authorities would delay the advent of national freedom for a long time. He was therefore intent upon devising some plan by which the deadlock in the country could be solved. In this way he gave birth to the Quit India idea. He was convinced that the British possession of India was the incentive for the threatened Japanese invasion, and he therefore asked every Briton to support his appeal to Britain to quit India not only in the interests of India but also in those of Great Britain and the world at large. He even went to the length of declaring that a free India would throw all her vast resources into the war and cooperate fully with the United Nations in the defence of India with all the armed forces at her disposal. He would not even object to the presence of British and American troops in India for purposes of defence. He clung to the belief that a settlement with Great Britain was possible and thought of seeking an interview with the Viceroy for an amicable settlement of the problem. It is also true that he openly talked of action and even of revolt in case there was no voluntary abdication of power on the part of Great Britain. But he nowhere described the nature of the action contemplated by him. The difficulty in regard to any action that

the Congress might resort to was that, on the one side, it did not want to embarrass the Government by any mass upheavals, and on the other, it realised the futility of a merely symbolic civil disobedience movement.

But Mahatmaji was convinced that submission to the ways of the Government would lead to complete demoralisation of the people and their losing all the strength they had gathered during the preceding twenty or thirty years. He was therefore prepared for direct action on the part of the people, even if it had an adverse effect on the prosecution of the war effort. For four long months he thought loudly and gave expression to his views in the *Harijan* and in interviews to press correspondents. The Government, however, sat tight and adopted the do-nothing policy, and perfected its machinery to attack and crush Congress if it indulged in any direct action.

The A. I. C. C. met at Bombay on the 7th and 8th of August 1942, to consider and debate the Quit India resolution, which had been prepared by the Working Committee in its meeting at Wardha in July, and adopted it. It is a long and reasoned argument in favour of the immediate recognition of the freedom of India and the ending of British rule in the country which it described as 'an urgent necessity, both for the sake of India and for the success of the cause of the United Nations'. It said that the continuation of the British rule was degrading and enfeebling the country and making her progressively less capable of defending herself and of contributing to the cause of world freedom. India in bondage was the symbol of British imperialism and the taint of that imperialism was bound to affect the fortunes of the war. The resolution asserted that the 'peril of to-day necessitates the independence of India and the end of British domination. No future promises or guarantees can affect the present situation or meet that peril. They cannot produce the needed psychological effect on the mind of the masses. Only the glow of freedom now can release that energy and enthusiasm of millions of people which will immediately transform the nature of the war.'

The Resolution further affirmed that the Congress was anxious not to embarrass in any way the defence of China or Russia, 'whose freedom is precious and must be preserved, or to jeopardise the

defensive capacity of the United Nations. But the peril grows both to India and these nations, and inaction and submission to a foreign administration at this stage is not only degrading India and reducing her capacity to defend herself and resist aggression, but is no answer to that growing peril and is no service to the people of the United Nations.' The A. I. C. C. felt no longer justified in holding the nation back from endeavouring to assert its will against an imperialist and authoritarian government, and therefore resolved to sanction the starting of 'a mass struggle on non-violent lines on the widest scale'. After the resolution was put to vote and carried, Mahatmaji addressed the house for about 70 minutes. He spoke 'like a prophet in a moment of inspiration, full of fire, purifying by its flames..... full of the spirit Divine', and exhorted the nation to Do or Die.

**The Upheaval of 1942.**— It should be observed that the A. I. C. C. did not actually start the civil disobedience movement ; it merely passed a resolution sanctioning it in case the Government failed to take steps to satisfy the national demand, and entrusted its command to Gandhiji. In an interview before the meeting Mahatma Gandhi said that he 'contemplated an interval between the passing of the resolution and the starting of the struggle'. A letter was to go to the Viceroy with a view to exploring the chances of a peaceful settlement of the problem. There was also the idea of drawing the attention of the chiefs of the principal members of the United Nations to the problem and seeking their good offices in its solution. The Government, however, thought otherwise : it did not want that the definite and explicit anti-fascist attitude of the Congress should be made fully known to the United Nations ; perhaps it did not believe in the sincerity of the Congress. Thinking that the Congress aimed at a widespread subversive movement, it decided to act firmly and act quickly. It took the initiative and started a most intense and widespread repression of Indian patriotism. It arrested Mahatma Gandhi and the members of the Working Committee in the early hours of the morning of August 9 and sent them to unknown destinations. Rounding up of provincial and local leaders followed throughout the country. The masses did not know what to do ; the leaders had given no directions as to the manner in which the movement was to be conducted. There were natural demons-

trations, meetings, processions and hartals ; but they were suppressed with a stern hand. Meetings were broken up and sometimes fired upon. Since the usual channels through which the public could give expression to its feelings were all blocked, the suppressed emotions of the masses found expression in an orgy of violence. They began to tear up railway lines, cut down telegraph and telephone wires, and set fire to government buildings. Railway service was dislocated in several parts and some areas were isolated from the rest of the country. There were strikes on the part of labour in many important centres like Jamshedpur, Ahmedabad and Bombay. The Indian Communists played a most dishonourable and treacherous part in the struggle ; instead of helping in fomenting strikes they sided with the Government and sabotaged the national movement by keeping away the workers under their influence from striking. They advocated the withdrawal of the Quite India resolution, and supported Mr. Jinnah's demand for Pakistan. The mass upheaval was more violent and intense in some parts than in others ; at some places British authority ceased to exist and the people established a parallel government of their own ; e. g., in Ballia and Basti in the U. P., in Satara in the Bombay Presidency and in Midnapore in Bengal. Such areas had to be reconquered with the help of the military, and in consequence the people there were subjected to unspeakable horrors and most barbarous and brutal treatment. These spontaneous reactions to the unprovoked and sudden arrests of the leaders proved that the masses were being goaded by an inner urge for freedom and were determined to put an end to foreign rule. It appeared as if the country was in open revolt against the foreign government. But an unarmed and leaderless mob could be no match to the 'leonine' violence of a powerful and organised government having almost unlimited military resources at its disposal. The external manifestation of the spirit became less frequent as time passed, and the movement went underground under the leadership of socialist leaders like Shri Jai Prakash Narayan who escaped from the Hazaribag jail but was rearrested after some time under dramatic circumstances near Lahore. The severity of the measures adopted by the Government to quell the rebellion can be measured by the fact that according to official information the leaderless mob had to face police and military firing on 538 occasions, and were also machinegunned from low-flying aircrafts

in some cases. Heavy collective fines were imposed upon recalcitrant villages and the fines were realised by all means open to the authorities. It is estimated that about 1000 persons lost their lives as the result of police and military firing and fines to the tune of ninety lakhs of rupees were imposed. It is hardly necessary to narrate the numerous acts of heroism and patriotism performed by the people or to describe the sufferings and privations they had to undergo during those terrible days.

**Mahatmaji's Fast.**— The way in which the British Government rejected the Congress offer of conditional co-operation in the war effort every time it was made showed that they did not desire any settlement of the Indian problem. They knew it well that once the Indian leaders were given an opportunity to rouse the spirit of resistance against the fascist invader, it would mean the beginning of the end of British domination over India; they therefore never favoured the establishment of a national government; rather they tried their best to prevent its formation. But they found it necessary to justify their conduct before their allies; particularly, the highly repressive measures adopted to suppress the upheaval of 1942. They could do so only by dubbing Gandhiji and the Congress as pro-axis and throwing the responsibility for violence upon them. They blacked-out the truth about India and carried on an intense propaganda fastening the entire responsibility for the 1942 disturbances upon Gandhiji and the Congress. They claimed to be in possession of evidence which showed that while Congress talked of a peaceful settlement of the problem, it had no genuine desire for it; that while Congressmen had non-violence on their lips, they were actually planning in secret violent subversive activities on a national scale. In other words, the Government not only held Gandhiji and the Working Committee responsible for the violence on the part of the masses and the repressive measures they had to take, they also charged the latter with duplicity, dishonesty and immorality. Mahatmaji protested against such baseless accusations and demanded an opportunity to refute them. He asked the Government to try him and the members of the Working Committee on the charge of having fostered and abetted violence, and thereby afford them an opportunity to prove their innocence. He also asked for facilities to go over the whole question in consultation with the members of the

Working Committee. His position can be summed up in his own words : '(i) If you want me to act singly, convince me that I was wrong and I will make ample amends. (ii) If you want me to make any proposals on behalf of the Congress, you should put me among the Congress Working Committee members. I do plead with you to make up your mind to end the impasse.'

The Government turned a deaf ear to all the protests of Mahatmaji. They neither made public the evidence on the basis of which they charged the Congress with duplicity, etc., nor afforded any opportunity to Mahatmaji to refute the charges brought against him and the Working Committee. They also did not withdraw the charges. The replies to the letters of Gandhiji were most evasive. The cup of Mahatmaji's patience was full, and he decided to go on a 21 days' fast according to capacity as a protest against what he called the 'leonine violence' of the Government and in order to demonstrate his own innocence before God.

The fast commenced on February 19, 1943. It caused great consternation in the country, and whatever trace of violence there was on the side of the people, that too subsided. During the fast his condition became critical several times, and his death was feared. There was a country-wide agitation for his release. A non-party conference met at Delhi and urged upon the Government to release him. Mr. Jinnah and the Muslim League alone did not join in this appeal. It had no impression upon Lord Linlithgow and Mr. Churchill. They refused to release him unless he withdrew the Quit India resolution and showed repentance for his conduct. As a protest against this callousness three members of the Viceroy's Executive Council, Shri Homi Modi, M. S. Aney, and N. R. Sarkar resigned their seats. Even this had no effect upon the Government.

But despite his old age and great physical weakness, and despite the fact that many a time the physicians who attended upon him regarded his passing away a question of hours, Mahatmaji passed through the crisis and completed his fast successfully and thereby baffled medical science. The fast did not ease the political situation in the country in any way. It may be mentioned here in passing that during his detention in the Aga Khan Palace Mahatmaji suffered two great bereavements in the demise of his trusted and able private secretary, Mahadev Desai, and his devoted wife,

### Kasturba Gandhi.

**Mahatmaji's Release and After.**— Mahatma Gandhi fell ill in April 1944 and his condition became serious. Rather than let him die as a prisoner, Lord Wavell who had succeeded Lord Linlithgow as the Governor General in October 1943 released him in May 1944. It is possible that the success of Netaji Subhash Chandra Bose in organising the Indian National Army in Malaya and its invasion of India in April 1944 had something to do with the release of Mahatmaji. Shri Subhash Chandra Bose had escaped from detention in his home in January 1941, and after spending some time in Afghanistan, Italy and Germany arrived in Japan, and with Japanese help set up the Indian National Army to fight the British and free the country from their domination. The Indian National Army had some initial success, but later on had to surrender. Netaji is reported to have died as a result of the crashing of the plane in which he was travelling.

After his release Mahatma Gandhi continued his efforts to secure a settlement with the Government and thus resolve the deadlock in the country. In his letters to Lord Wavell he sought to assure him that however much he and the Working Committee might criticise the British Government and Administration, they were sincere friends of the British, and pleaded that if only the British Government could develop trust in them, they would be found to be the greatest helpers in the fight against Nazism, Japanese militarism, etc. In reply the Governor General insisted on the withdrawal of the Quit India demand and the abandonment of the policy of non-cooperation on the part of the Congress as a condition precedent to the starting of negotiations with the latter. Even if he were so-minded, Mahatma Gandhi could take no steps to suspend the movement without first consulting the members of the Congress Working Committee who were in detention in the Ahmednagar Fort. He was denied permission to contact them. His efforts were thus fruitless, and the deadlock continued.

**C. R. Formula.**— While on the one side after his release Mahatmaji entered into correspondence with Lord Wavell with a view to the easing of the political situation, on the other side Shri C. Rajagopalachari began a move for a settlement with the Muslim League. He proposed a formula to which Mahatmaji gave his

consent. According to it the Muslim League was to endorse the Indian demand for independence and to cooperate with the Congress in the formation of a Provisional Interim Government for the transitional period subject to the terms given below:

'After the termination of the war a Commission shall be appointed for demarcating contiguous districts in the north-west and east of India wherein the Muslim population is in absolute majority. In the areas thus demarcated a plebiscite of all the inhabitants, held on the basis of adult franchise or other practicable franchise, shall ultimately decide the issue of separation from Hindustan. If the majority decides in favour of a Sovereign State separate from Hindustan, such a decision shall be given effect to, without prejudice to the right of the districts on the border to choose to join either state.' In the event of separation, a mutual agreement shall be entered for safeguarding defence, communications and other essential purposes. Any transfer of population shall be on an absolutely voluntary basis. These terms shall be binding only in case of transfer by Britain of full power and responsibility for the governance of India.'\*

This means that Mahatmaji consented to the establishment of Pakistan *after* the achievement of independence by India and only after a plebiscite in the Muslim majority areas in which all the adult inhabitants were to participate. Mr. Jinnah did not accept the proposals. He wanted the whole of the Punjab, Bengal and Assam along with N. W. F., Sind and Baluchistan and without any sort of plebiscite. Mahatmaji met Mr. Jinnah several times at the residence of the latter to arrive at an understanding with him on the Hindu-Muslim question. The attempt proved abortive.

**The Wavell Plan and the Simla Conference.**— Although soon after his arrival in India in October 1943, Lord Wavell had spoken of the mysterious things he had brought in his mental bag from England and people expected him to act quickly to solve the political tangle, he said nothing as to the way in which he proposed to proceed in the matter and took no step whatever, except releasing Mahatma Gandhi in May 1944. He made a move in the matter only after his return from London where he had gone for consultation in regard to the Indian question. A few words about the

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\* History of Congress, Vol. II, page 633.

reasons for his trip to London seem to be necessary.

The war in Europe had ended in a complete victory for the Allies in 1945, and general elections were due in Great Britain. Some Labour M. P.'s had been persistently criticising the policy adopted by Mr. Churchill towards India, and one Labour member of the House of Lords took the unprecedented step of introducing a bill in Parliament advocating the application of the Statute of Westminster to India. Of course, the House of Lords did not grant permission to introduce it. Otherwise also the Labour party advocated a reconstitution of the Empire on the basis of freedom and fellowship as a part of its election campaign. All this made Mr. Churchill uneasy. He was afraid lest there should be a swing of public opinion towards the Labour party. He therefore thought it necessary to take some steps which would take the wind out of the sails of the Labour party and prove to the electorate that he wanted to solve the Indian question. Accordingly he invited Lord Wavell to London for consultation. Lord Wavell left India on March 21, and returned on June 4, 1945. On June 14 he made a broadcast speech in which he proposed to hold a Conference at Simla on June 25, to which he would invite twentyone leaders of the country. Besides Gandhiji and Jinnah they were to include premiers of provincial governments, persons who held the office of the premier in Section 93 provinces before the breakdown of the constitution, the leader of the Congress party and the deputy leader of the Muslim League in the Central Assembly, the leaders of the Congress and the League in the Council of State, the leaders of the Nationalist Party and the European group in the Central Legislative Assembly, and a representative each of the Sikhs and the Scheduled Castes.

The Conference was called for the purpose of solving the deadlock and advancing the country towards self-government by reconstituting the Viceroy's Executive Council and making it more representative of organised political opinion in the country. The Executive Council was to be made entirely Indian in its composition except for the presence of the Governor General who would be its President and the Commander-in-Chief who would hold charge of the war portfolio. The subject of external affairs which had been hitherto administered by the Viceroy was to be placed under an Indian member. The new Executive Council was to work under

the existing constitution. The Viceroy's power of over-riding it could not be given up, but Lord Wavell assured that this power was not to be used unreasonably. Even the Secretary of State was to intervene only in the interests of India and not in those of Great Britain. He also said that it was proposed to appoint a British High Commissioner in India to represent Great Britain's commercial interests as in the Dominions. Lord Wavell added that the Executive Council was to include equal proportions of Caste Hindus and Muslims. This would not, in any way, prejudge the future constitution of India.

The main function of the new Executive Council would be to prosecute the war against Japan, to carry on the Government of British India until a new permanent constitution could be agreed upon and come into force, and to consider the means by which such common agreement could be reached. The third function was the most important.

If the Conference were successful, Lord Wavell hoped that ministries would again be formed in the 93 Section provinces, and that these governments would be coalition governments. The Conference was also to discuss the appropriate time for fresh elections to the central and provincial legislatures.

In order to enable the members of the Congress Working Committee to participate in the discussions the Viceroy ordered their release. This broadcast speech and the release of the members of the Working Committee on June 15, were the first steps towards the removal of the deadlock. High hopes were raised on all sides.

The Congress accepted the invitation to attend the Simla Conference, and so did the Muslim League, the Sikhs, the Scheduled Classes and the European group in the Assembly. The Conference opened at Simla on June 25, 1945, under the chairmanship of Lord Wavell to discuss the proposals of His Majesty's Government which, as has been stated above, were designed to resolve the political deadlock and advance India towards the goal of full self-government. After meeting for the first two days it adjourned for a short time, and then again adjourned for more than a fortnight. When it reassembled on July 14, the Viceroy announced the failure of the Conference to reach any agreed conclusion about the forma-

tion of the new Executive Council. In the course of the statement he made before it on the last day he said : 'My original intention was that the Conference should agree upon the strength and composition of the proposed Executive Council, and that thereafter parties should send me lists of names. To these lists I would, if necessary, have added names of my own, and attempted to form on paper an Executive Council which might be acceptable to His Majesty's Government, myself, and the Conference. I intended to discuss my selections with the leaders and finally to put them to the Conference. Unfortunately, the Conference was unable to agree about the strength and composition of the Executive Council, and on June 29, I undertook, with the approval of the Conference, to endeavour to produce a solution not based on any formula agreed upon in advance. I asked the parties to let me have lists of names, and said I would do what I could to produce a solution acceptable to the leaders and to the Conference. I received lists from all parties represented here except the European group who decided not to send a list, and the Muslim League. I was however determined that the Conference should not fail..... I therefore made my provisional selections, including certain Muslim League names.....

'I did not find it possible to accept the claims of any party in full. When I explained my solution to Mr. Jinnah, he told me that it was not acceptable to the Muslim League, and he was so decided that I felt it would be useless to continue the discussion.....'

**Causes of the Failure of the Simla Conference.**— The Simla Conference thus failed. It would not be out of place here to examine the causes of its failure. In the first place, it is worth noting that it did not fail because the proposals of His Majesty's Government did not transfer enough power to the representatives of the people or that they failed to satisfy the minimum demands of the people. Gandhiji was satisfied that the Wavell plan was conceived in the right spirit and saw in it the seeds of independence. In the second place, Congress cannot be charged with responsibility for its failure. It failed because the demands of Mr. Jinnah were not acceptable to the Congress, Jamiat-ul-Ulema, Nationalist Muslims and to Malik Khizr Hayat Khan. The Governor-General was not prepared to have an interim settlement without the co-operation and consent of the Muslim League. This attitude of the Viceroy

amounted to placing a veto over the political progress in the country in the hands of the Muslim League, and Mr. Jinnah made the fullest use of this power. This was the legacy left by Lord Linlithgow. It was the belief of many a man at that time that the Wavell plan was merely an election stunt of Mr. Churchill, and the Government were using Mr. Jinnah as a cloak for retaining power in their hands; otherwise there is no reason why he and the Muslim League should not have been by-passed on account of the unreasonable character of their demands. The alliance between the Europeans and the Muslims entered into on the occasion of the Second R. T. C. had not been abrogated till then. Nor could Mr. Churchill be expected to change his views about and attitude towards India so quickly and agree to the transfer of power to the people. The following extract from Dr. Sitaramayya's *History of the Indian National Congress* would be read with interest in this connection. He writes as follows :— "Three years back in April 1942, it was the Congress that broke the Cripps Mission, if it was not Cripps himself who broke his own. In Simla it was the League that broke the Wavell Plan although Lord Wavell took the blame on himself. Exactly what happened in Delhi with Cripps happened in Simla too with Wavell. The Viceroy assured him, said Maulana Abul Kalam Azad..... 'in his first interview that no party to the Conference would be allowed to obstruct settlement out of willfulness. Everyone knew what Mr. Jinnah would do and everyone believed that against that possibility the Viceroy had armed himself with authority to deal with him appropriately.' Yet Wavell's hand was stayed at the last moment even as Cripps' was." It is also interesting to see that the Wavell Conference came to an end soon after the elections were over in England.

The reasons why the demands of Mr. Jinnah were not acceptable to the Congress were described in the statement made before the Congress by Maulana Abul Kalam Azad, the President of the Congress at that time. He said that the Muslim League claimed the sole right to nominate all the Muslim representatives on the new Executive Council. That claim was untenable and unsustainable; the Congress could not accept the position. The Congress was not a Hindu body. It could not wipe off its history of fifty years. As a Muslim, he could not tolerate the Congress becoming a purely

Hindu body. The Congress had a right to claim a share for the welfare and responsibilities of the Muslims. Malik Khizr Hayat Khan Tiwana, Premier of the Punjab, agreed with Maulana Azad and held that the Muslim League could not be given the sole right of nominating the Muslim members of the Executive Council. That would have amounted to a disenfranchisement of the non-League Muslims. A similar view was held by Muslim elements outside the League. In this connection it should be recalled that the most important ground on which the attempts made in the past by the Congress to arrive at a settlement of the Hindu-Muslim question failed was the inability of the Congress to accept the demand of Mr. Jinnah that the Congress should first recognise the League as the sole representative of the Indian Muslims. To have accepted that contention would have involved the abandonment by the Congress of its objective of a single indivisible India and also of its own character as a *national* organisation. On the other hand, the insistence of the League on that claim was indispensable for the success of its Pakistan objective. The immediate cause of the failure of the Simla Conference was merely a symptom of the deeper and irreconcilable opposition between the Muslim League demand for Pakistan and the Congress conception of an indivisible India. In the final analysis, blame for its failure must be laid at the door of the British Government. Its representative failed to act justly and firmly. If it be true, as was thought by many, that the Simla Conference was due to Russian pressure even as the Cripps Mission was due to American, its failure should cause little surprise.

Even though the Simla Conference failed, it was not wholly barren of results. It clearly demonstrated, on the one side, the willingness and readiness of the Congress to shoulder the responsibility of administration provided there was real transfer of power to the people. With a view to enabling them to participate in the Conference the Government had released the members of the Working Committee. This was the first and indispensable step in the solution of the deadlock in the country. It had another effect also which deserves to be noted. The suppression of the 1942 struggle had left the country in a mood of despair and with a sense of frustration. The speeches made by Pandit Jawahar Lal Nehru and Sardar Patel after the Simla Conference and the lifting of the ban on the Congress

went a long way in removing that feeling of frustration.\* They told the people that there was nothing to be ashamed of for what had been done by the leaderless people in an angry mood. Though there had been some departure from the strict path of non-violence, the heroism displayed by the people in resisting the Government's repression of their urge for freedom was praiseworthy. Lest such talks should be misunderstood by the people as suggesting an abandonment of the policy of non-violence which had been the sheet anchor of the Congress policy since 1920, the Working Committee passed a resolution in December 1945 of which the following was a part : 'If many acts of heroism and sacrifice are to their credit, there were acts done which could not be included in non-violence.' For the guidance of the people the Working Committee confirmed that 'non-violence does not include the burning of public property, the cutting of telegraph wires, the derailing of trains and intimidation.'

**After the Simla Conference.**— With the object of reviewing the situation in the country and deciding what the next step should be for the removal of the deadlock and the restoration of normal political life, Lord Wavell called a conference of the Provincial Governors on the 1st and 2nd of August, 1945. It was believed that the question of restoration of provincial autonomy in provinces governed under Section 93, and the holding of general elections were discussed in the meeting. The Viceroy decided to hold general elections. Meanwhile, conditions became quite different in Great Britain. As a result of the general elections held there after the unconditional surrender of Germany, the Labour Party came into power. Mr. Churchill and Mr. Amery who were consistently opposed to the transfer of power to the people of India made way for Mr. Attlee and Lord Pethic Lawrence as the Prime Minister and the Secretary of State for India respectively. The new Labour Government called Lord Wavell to England for holding fresh discussions and reviewing the whole field of the problems with which India was concerned. On his return from London Lord Wavell broadcast a message on September 19 in the course of which he said :

"His Majesty's Government are determined to do their utmost to promote

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\* The story of the Azad Hind Fauj, organised by Netaji Shri Subhash Chandra Bose, and the trial of its Commanders in the historic Red Fort of Delhi also contributed a good deal to the renewal of spirit in the country.

in conjunction with the leaders of Indian opinion the early realisation of full Self-government in India. During my visit to London they have discussed with me the steps to be taken. An announcement has already been made that elections to the Central and Provincial Legislatures, so long postponed owing to war, are to be held during the coming cold weather. Therefore His Majesty's Government earnestly hope that ministerial responsibility will be accepted by political leaders in all provinces. It is also the intention of His Majesty's Government to convene as soon as possible a constitution-making body, and as a preliminary step, they have authorised me to undertake, immediately after the elections, discussion with the representatives of the Legislative Assemblies in the Provinces, to ascertain whether the proposals contained in the 1942 Declaration are acceptable, or whether some alternative or modified scheme is preferable. Discussions will be undertaken with the representatives of the Indian States with a view to ascertaining in what way they can best take their part in the constitution-making body.....

Prime Minister Attlee also broadcast a similar message from London on the same date.

The A. I. C. C. met towards the end of September and considered the proposals put forward by the Governor General. It found them 'vague, indefinite and unsatisfactory', and reiterated that 'nothing short of independence can be acceptable to the Congress and the country'. It, however, decided to contest the general elections to the Central and Provincial legislatures, even though the franchise was very much restricted and in spite of the various handicaps under which the Congress was working.

**The Congress Manifesto.**— The Congress issued a long election Manifesto in which it described in a nutshell its past history and achievements and future programme, and appealed to 'the voters all over the country to support the Congress candidates in every way at the forthcoming elections and to stand by the Congress at this critical juncture, which is so pregnant with future possibilities. In these elections petty issues do not count, nor do individuals, nor sectarian cries,— only one thing counts; the freedom and independence of our Motherland, from which all other freedoms will flow to our people.' The famous resolution of August 8, 1942, was made the central point of the Manifesto: "By its demand and challenge the Congress stands to-day. It is on the basis of this resolution and with its battle-cry that the Congress faces the election." It is not relevant to our purpose to reproduce the Manifesto.

The League also announced that it would fight the elections on the issue of Pakistan and its claim to represent all the Muslims of India.

**Election Results.**— As was expected the Congress swept the polls in general constituencies. A large number of its candidates were returned unopposed to the Central and Provincial Assemblies ; and where they were opposed by the Hindu Mahasabha, Liberal or Independent candidates, the latter suffered heavy defeats, forfeiting their securities in many cases. In the 'Sikh' constituencies in the Punjab though the Congress polled nearly one-half of the recorded votes, it could capture only one-third of the Sikh seats. The case was otherwise in the Muslim constituencies. In all the Hindu majority provinces the Muslim candidates put up by the Congress suffered heavy defeat except in the U. P., and to a smaller extent in Assam. In the Punjab and Bengal, two of the four Muslim majority provinces, the League secured signal success at the cost of the Congress. In Sind the Muslim League captured a majority of the Muslim seats and the pro-Congress section was in a minority. In the N. W. F. P., the Congress was successful in securing a majority, though the League fared much better than in the earlier elections of 1937. In other words, it can be said that both the National Congress and the Muslim League emerged as the two strong political parties in the country. The National Congress could claim that its 'Quit India' resolution of 1942 had the support and backing of the masses ; it secured 190 lakh votes, which constitutes 91.3 % of the votes cast in non-Mohammadan constituencies. Similarly the Muslim League could assert that a very large section of the Indian Muslims confided in it ; it secured 15 lakh votes which constituted about 75 % of the total votes cast in Mohammadan constituencies ; while the Nationalist and other non-League Muslims secured 5 lakh votes or a little more than 25 % of the total number of votes recorded. They, however, did not succeed in securing a proportionate number of Muslim seats. The result was that when popular ministries were formed in April 1946, Congress was in power in all the Hindu majority provinces and in the N. W. F. P., and the Muslim League formed the government only in two provinces, Bengal and Sind. In Bengal it had to rely upon the support of the European group. In the Punjab the Congress, the Akalis and the Unionists formed a coalition out-numbering the Muslim League which constituted the single largest party.

**Attlee's Statement**— While the Congress sat awaiting developments, expecting His Majesty's Government to implement the policy

outlined by the Viceroy in his broadcast of September 1945, Mr. Attlee, the British Prime Minister, made an important announcement in the House of Commons on March 15 in which he recognised India's right to Independence and expressed the determination of his Government to help Indians to attain freedom and not to allow any minority to place a veto on the advance of the majority, even though he and the British Government were mindful of the right of the minorities to be able to live free from fear. These words raised high hopes in the minds of Indians who began to think that veto which had been placed in the hands of the Muslim League by the Government of Mr. Churchill was about to be taken away from it. The hope, however, remained unfulfilled. The League did effectively prevent the settlement of the Indian question until its demand for Pakistan was conceded.

**The Cabinet Mission.**— The Prime Minister also announced that a mission consisting of three high ranking members of the British Cabinet— namely, Lord Pethic Lawrence, Secretary of State for India ; Sir Stafford Cripps, President of the Board of Trade ; and Mr. A. V. Alexander, First Lord of the Admiralty— was coming out to India to discuss with the leaders of Indian opinion the framing of an Indian constitution. He said: 'My colleagues are going out to India with the intention of using their utmost endeavours to help her to attain that freedom (the freedom to decide their own Destiny) as speedily and fully as possible. What form of government is to replace the present regime is for India to decide, but our desire is to help her to set up forthwith the machinery for making that decision.'

The Cabinet Mission arrived at Karachi by plane on March 23, 1946, and reached Delhi the next day. Lord Pethic Lawrence, in the course of a statement at Karachi, said: 'We bring to the people of this country, on behalf of the British Government and of the British people, a message of cordial friendship and goodwill. We are convinced that India is on the threshold of a great future.'

It is not necessary to give here the details of the way in which the Cabinet Mission tried their hand in solving the political problem of the country. This much however must be remembered that though the members declared that they came with open minds and without any commitments to any particular views, they could not possibly write on a clean slate. They were more or less bound by

the commitments of previous governments. It should also be borne in mind that their aim was to secure an 'agreed method of deciding on a new constitutional structure and the setting up of a more representative transitional government at the Centre', and not to determine the constitution itself. For the realisation of this objective it was necessary and indispensable for the members to understand the points of view of the different political parties, sections and interests in the country. They therefore started with interviewing and holding consultations with leaders of Indian opinion. They began with a conference with the Governor General who became a member of their Delegation, and the Governors of Indian Provinces. Later on, they invited leaders of the Congress and the Muslim League, and of other sections and interests including some of the Princes and important Prime Ministers of leading States. In all they had 'interviews with 472 leaders in 182 sittings. The variety of interests, classes, and creeds seeking through their representatives to press home their various demands is manifest from these numbers.\* But they concerned themselves mainly with the representatives of the National Congress and the Muslim League, and found they held most divergent views about the constitutional machinery proposed to be set up, namely, the Constituent Assembly, and also about the composition of the interim government. The Mission made an earnest effort to bring the two major parties together and resolve their differences. They called a Tripartite Conference at Simla composed of three representatives of the Congress, three of the League, the Viceroy and the members of the Mission. As a basis of negotiations they suggested a scheme based on the following fundamental principles : India was to have a Union Government dealing with Foreign Affairs, Defence and Communications ; the Provinces were to be formed into two groups, one comprising the predominantly Hindu provinces, and the other the predominantly Muslim provinces. Each group was to deal with such of the remaining subjects as the provinces in it might desire to be dealt with in common. The Provincial Governments were to deal with all the other subjects and were to have residuary sovereign rights.

The Tripartite Conference met for a week, from the 5th to the 11th of May. There was a full exchange of views ; and though

\* *The Indian Annual Register, Jan.-June 1946, page 116.*

both the Congress and the League were prepared to make considerable concessions in order to try and reach a settlement, it ultimately proved impossible to close the gap between the parties, and so no agreement could be concluded. The Congress was opposed to the principle of grouping. On the 12th of May its failure was announced. The Cabinet Mission and the Viceroy moved down to Delhi, and on May 16 they issued a statement containing their compromise proposals for the settlement of the problem. The proposals had the full approval of His Majesty's Government.

Having been 'greatly impressed by the very genuine and acute anxiety of the Muslims lest they should find themselves subject to a perpetual majority rule', the Mission examined the League demand for a separate and fully independent sovereign State of Pakistan. They came to the conclusion that the 'setting up of a separate sovereign Pakistan on the lines claimed by the Muslim League would not solve the communal minority problem. Nor could they see any justification for including within a sovereign Pakistan those districts of the Punjab and of Bengal and Assam in which the population is predominantly non-Muslim. Every argument that can be used in favour of Pakistan, can equally in our view, be used in favour of the exclusion of the non-Muslim areas from Pakistan.' The non-Muslims constituted about 38% of the total population in the North Western Zone comprising the Punjab, N. W. F., Sind and British Baluchistan, and a little more than 48% in the North Eastern Zone containing Bengal and Assam. They also considered whether 'a smaller sovereign Pakistan confined to the Muslim majority areas alone' might be a possible basis of compromise, but found it to be an impracticable proposition. They regarded it as quite impracticable because it involved a radical partition of the Punjab and Bengal which was contrary to the wishes and interests of a very large proportion of the inhabitants of these provinces. The Muslim League, too, did not like this scheme in as much as it excluded from Pakistan valuable areas without which it would be 'a moth-eaten and truncated Pakistan'.

There were other important administrative, economic and military considerations which weighted the scale against the division of the country. It would have disintegrated the whole of the transportation, postal and telegraphic systems which had been established

on the basis of a united India; it would have involved a splitting up of the armed forces of the country and thereby dealt a heavy blow to its efficiency and long established traditions. In view of these and other considerations the Mission found themselves unable 'to advise the British Government that the power which at present resides in British hands should be handed over to two entirely separate sovereign states'.

In a similar way the Cabinet Mission carefully examined the Congress scheme of an Indian Union under which the Provinces were to have full autonomy subject only to a minimum of central subjects comprising Foreign Affairs, Defence, and Communications. In case the provinces desired to take part in administrative and economic planning on a large scale, they could cede to the Centre optional subjects in addition to the compulsory subjects enumerated above. This scheme 'would, in our view present considerable constitutional disadvantages and anomalies'. It was also rejected by the Mission.

The Cabinet Mission also referred to the question of the relation between British India and the Indian States, and stated that under the new conditions it would be impossible for the British Crown to retain Paramountcy or to transfer it to the new Government of British India. It was however fortunate that the representatives of the Indian States had already expressed their willingness to co-operate in the new development of India. The precise form which their co-operation was to take was a matter for negotiation between them during the building up of the new constitutional structure.

**The Cabinet Mission Plan.**— After having rejected the Muslim League demand for a separate and sovereign Pakistan as 'impracticable', and the Congress scheme of a Union of India with only three compulsory subjects (and a few other optional subjects if the provinces so desired) as involving great constitutional disadvantages and anomalies, the Cabinet Mission proceeded to 'indicate the nature of a solution which in our view would be just to the essential claims of all parties, and would at the same time be most likely to bring about a stable and practicable form of constitution for All-India.' The Constitution was to take the following form :

'(i) There should be a Union of India; embracing both British India and the States, which should deal with the following subjects :

Foreign Affairs, Defence and Communications, and should have the powers necessary to raise the finances required for the above subjects.

'(ii) The Union should have an Executive and a Legislature constituted from British Indian and States' representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.

'(iii) All subjects other than the Union subjects and all residuary powers should vest in the Provinces.

'(iv) The States will retain all subjects and powers other than those ceded to the Union.

'(v) The Provinces should be free to form Groups with executives and legislatures, and each Group could determine the Provincial subjects to be taken in common.

'(vi) The constitution of the Union and of the Groups should contain a provision whereby any province could, by a majority vote of its Legislative Assembly, call for a reconsideration of the terms of the constitution after an initial period of 10 years and at 10 yearly intervals thereafter.'

The Cabinet Mission made the above-mentioned recommendations in regard to the broad basis of the future constitution because it became clear to them in the course of their negotiations that 'not until that has been done was there any hope of getting the two major communities to join in the setting up of the constitution-making machinery.'

The Mission next took up the question of the constitution-making machinery. The absence of adult suffrage in the country and the fact that the numerical strength of the Legislative Assemblies in the various Provinces did not bear any proportion to the total population of each province and the further fact that the strength of each of the several communities in each provincial Legislative Assembly was not in proportion to its numbers in the Province, made the problem of the determination of the composition of the Constituent Assembly a difficult task. After a careful consideration of the various alternative modes in which the Constituent Assembly could be constituted the Cabinet Mission decided

that the fairest and most practicable plan would be (a) to allot to each Province a total number of seats proportional to its population, roughly in the ratio of one to a million, as the nearest substitute for representation by adult suffrage; (b) to divide this provincial allocation of seats between the main communities in each Province in proportion to their population, and (c) to provide that the representatives allotted to each community in a Province shall be elected by the members of the community in its Legislative Assembly.' For these purposes the Mission recognised only three main communities—General, Muslim and Sikh.

On the above basis the total strength of the Constituent Assembly was fixed at 385+4. British India was to have 292 members from the Governors' Provinces and four from the Chief Commissioners' Provinces. The Indian States were to have 93 representatives at the maximum. The representatives of British India were distributed among the various Provinces and communities as under :

#### Section A

| Province          | General    | Muslim    | Total      |
|-------------------|------------|-----------|------------|
| Madras            | 45         | 4         | 49         |
| Bombay            | 19         | 2         | 21         |
| United Provinces  | 47         | 8         | 55         |
| Bihar             | 31         | 5         | 36         |
| Central Provinces | 16         | 1         | 17         |
| Orissa            | 9          | 0         | 9          |
| <b>Total</b>      | <b>167</b> | <b>20</b> | <b>187</b> |

#### Section B

| Province     | General  | Muslim    | Sikh     | Total     |
|--------------|----------|-----------|----------|-----------|
| Punjab       | 8        | 16        | 4        | 28        |
| N. W. F. P.  | 0        | 3         | 0        | 3         |
| Sind         | 1        | 3         | 0        | 4         |
| <b>Total</b> | <b>9</b> | <b>22</b> | <b>4</b> | <b>35</b> |

#### Section C

| Province     | General   | Muslim    | Total     |
|--------------|-----------|-----------|-----------|
| Bengal       | 27        | 33        | 60        |
| Assam        | 7         | 3         | 10        |
| <b>Total</b> | <b>34</b> | <b>36</b> | <b>70</b> |

In order to represent the Chief Commissioners' Provinces three members were to be added to Section A, one each from Delhi, Ajmer-Merwara, and Coorg. One was to be added to Section B to represent British Baluchistan.

The representation of the States was not to exceed 93 on the same basis of calculation. The exact method of their selection was to be settled by consultation. At the preliminary stage the States were to be represented by a Negotiating Committee.

The Statement of May 16 also lays down the business to be transacted by the Constituent Assembly at its first meeting. It includes the election of the Chairman and other office-bearers, election of the Advisory Committee on the Rights of Citizens, Minorities and the Tribal and Excluded Areas (which should contain representatives of the interests affected), and the division of the provincial representatives into three Sections, A, B, C, as shown in the table reproduced above. These Sections are to settle the constitutions of the Provinces included in each one of them, and also to decide whether any group constitution is to be set up, and if so, with what provincial subjects the Group will deal. It also contained a provision giving to the Provinces the right to opt out of the Groups.

Among other matters to which reference is made in the Statement we may make mention of two only. It contemplates a treaty to be negotiated between the Constituent Assembly of the Union and the United Kingdom to provide for certain matters arising out of the transfer of power. And it attaches the greatest importance to the setting up at once of an Interim Government having the support of the major political parties. In this Interim Government all the portfolios including that of the War Member were to be held by 'Indian leaders having the full confidence of the people'. 'The British Government will give the fullest measure of cooperation to the Government so formed in the accomplishment of its tasks of administration and in bringing about as rapid and smooth a transition as possible.'\*

**Appraisal of the Cabinet Mission Plan.**— For a proper and correct appraisal of the Cabinet Mission Plan we must bear in mind

\* All quotations in these sections are from the statement issued by the Cabinet Mission on May 16, 1946.

the circumstances under which it was conceived and announced. It would be recalled that there was a deadlock in the country which the British Government wanted to remove as the war in Europe had ended in a complete victory for the Allies. They, i. e., His Majesty's Government, were even willing to set up a Constituent Assembly for the framing of a new constitution for India. But the inability of the National Congress and the Muslim League to agree upon the method of framing a new constitution had created a serious obstacle. The two parties could not come to any understanding because their objectives differed widely. The Muslim League claimed that India should be divided into two completely separate and sovereign states, and refused to take part in constitution-making unless this claim was conceded in advance. The Congress stood for a single and united India, and was prepared to concede the greatest possible measure of autonomy to the Provinces to enable the Muslims to preserve their own culture and way of life in Muslim majority provinces; it was, however, unwilling to agree to the creation of Pakistan. The Mission tried to bring the two parties together so that they could arrive at some settlement. After having failed in this attempt they had no option but to propose a solution 'which by securing the main objects of both parties will enable a constitution-making machinery to be brought into immediate operation'. They made their proposals 'after listening to all sides, and after much earnest thought.' Being of the nature of a compromise, their proposals were not calculated to satisfy all the parties completely. It must, however, be admitted that the proposals do represent an earnest and fair attempt to secure the main objectives of the Congress and of the League.

By providing for a Union of India, consisting of the Provinces and the Indian States, and with an Executive and a Legislature empowered to deal with the essential subjects of External Affairs, Defence and Communications, and the finances necessary for these services, and by rejecting Pakistan, the Plan obviously accommodated the National Congress.

By giving the Provinces complete autonomy in all subjects except the three reserved for the Union—namely, foreign relations, defence and communications—and by further providing that provinces may form themselves into groups to carry out common services

covering a wider area than that of a single Province, and giving to these Groups executives and legislatures of their own, the Cabinet Mission Plan sought to give to the Muslims all the advantages of Pakistan without incurring the dangers involved in a division of the country. Bengal and Assam were to form one Group ; and the Punjab, the N.W.F.P., Sind and British Baluchistan were to constitute another Group. The territories covered by the two Groups were exactly those which the League wanted to include in Pakistan. Further, as has been stated earlier, the Plan provided that a question raising a major communal issue in the Constituent Assembly required for its decision a majority of the representatives of each community and the members of the C. A. as a whole. This again was done to meet the League standpoint. These large concessions were made to secure the assent and cooperation of the League which otherwise was not forthcoming. That the League found in the proposals of the Cabinet Mission the substance of Pakistan is evident from the fact that, while critical of the Statement, particularly in regard to the formal rejection of the demand for Pakistan, the Muslim League Council passed a resolution on June 6, 1946, accepting the scheme.

The Cabinet Mission Plan had other merits also. The Constituent Assembly was to be constituted on the democratic principle of population strengths and proportional representation. The old method of giving weightage to the minorities was completely done away with. Communal representation was reserved only for the Anglo-Indians, Indian Christians, and other numerous interests which were recognised by the Act of 1935. Even though the principle of communal representation was not given up in its entirety, it was no small gain that its area was restricted. It may be pointed out in this connection that the Congress showed great wisdom and large-heartedness in giving some of the general seats in the Constituent Assembly to Anglo-Indians, Christians and non-Congress Hindus.

It was also a great merit of the Mission Plan that the entire membership of the Constituent Assembly was Indian. On the attention of the Cabinet Mission being drawn to the fact that under its scheme the European members of the Legislative Assemblies in Bengal and few other provinces could secure the election of some Europeans to the Constituent Assembly, they and the Governor-

General saw to it that the European members did not take part in the election of the members of the Constituent Assembly. The Europeans in the U. P. Legislative Assembly formed the only exception to this rule. There was to be no interference with the work of the Constituent Assembly either from the British Government or from the officials. Within the framework of the scheme the Constituent Assembly was sovereign.

The merits of the scheme were very lucidly pointed out by Lord Wavell in a broadcast from Delhi on May 17. Here are a few extracts from it :

'I can assure you of this, that very much hard work, very much earnest study, very much anxious thought, and all the goodwill and sincerity at our command have gone to the making of these recommendations. We would have much preferred that the Indian leaders should have themselves reached an agreement on the course to be followed, and we have done our best to persuade them; but it has not been found possible, in spite of concessions on both sides which at one time promised results.

'The proposals put before you are obviously not those that any one of the parties would have chosen if left to itself. But I do believe that they offer a reasonable and workable basis on which to found India's future constitution. They preserve the essential unity of India which is threatened by the dispute between the two major communities; and in especial they remove the danger of the disruption of that great fellowship, the Indian army..... on whose strength, unity and efficiency her future security will depend,

'They offer to the Muslim community the right to direct their own essential interests, their religion, their education, their culture, their economic and other concerns..... To another great community, the Sikhs, they preserve the unity of their home-land the Punjab..... They provide in the special committee, which forms a feature of constitution-making machinery, the best chance to the smaller minorities to make their needs known and secure protection for their interests..... They offer to India the prospects of peace, a peace from party strife.....'

**Congress Attitude to the Scheme.**— The Congress President called a meeting of the Working Committee on May 17 to consider the scheme. The Committee sought clarification on some points which were either contrary to the Congress standpoint or failed to meet its requirements. One of the points referred to the Grouping of Provinces, another to the sovereign character of the Constituent Assembly, and a third referred to the new basis and character of the proposed Interim Government. The question of grouping the Provinces was a vital one, and the Working Committee drew the

attention of the Cabinet Delegation to the discrepancy between its recommendations made at two different places. Section 5 of paragraph 15 of the Statement leaves the Provinces 'free to form Groups with executives and legislatures', while clause (v) of paragraph 19 seems to make it compulsory for the Provinces to join Groups. Congress would not object to grouping if the Provinces were given freedom of choice to join or not to join, but would seriously object to the principle of compulsory grouping. The Working Committee considered the Statement in the light of its objective, namely, 'Independence for India ; a strong, though limited central authority ; full autonomy for the Provinces ; the establishment of a democratic structure in the centre and in the units ; the guarantee of the fundamental rights of each individual so that he may have full and equal opportunity of growth ; and that each community should have opportunity to live the life of its choice within the large framework.' Since the Mission Statement did not give a full picture of the future, particularly of the National Government proposed to be established at the centre, the Committee found themselves unable to give any opinion on it at that stage.

**The League Attitude.**— The Council of the Muslim League also met on May 22, and issued a statement which was highly critical of the scheme and non-committal in attitude. It sought clarification on several points.

**Cabinet Clarification.**— On May 25 the Cabinet Mission issued a statement which emphasised the point that the scheme stood as a whole and could succeed only if it was accepted and worked in a spirit of cooperation. It also stated that once the Constituent Assembly was formed and began working there was no intention of interfering with its discretion or questioning its decisions. With regard to the question of grouping raised by the Congress it said that the interpretation that the Provinces are *free* to group does not accord with the Delegation's intentions.

**The Controversy about the Interim Government.**— The proposal to set up an Interim Government having the support of the major political parties formed an important and integral part of the recommendations made by the Cabinet Mission. The task was left to the Viceroy who entered into correspondence with Indian leaders. It came to be described as the *short-term* plan as distinguished from

the setting up of the constitution-making machinery which was called the long-term plan. A good deal of correspondence took place between Lord Wavell and the Presidents of the Congress and the League on this topic. The Congress wanted a declaration to the effect that the Interim Government would function as a Dominion Cabinet and be responsible to the Central Assembly, with the Governor General functioning as the constitutional head. In reply the Governor General said that it was the intention of His Majesty's Government to give to the Indian Government the greatest possible freedom in the exercise of the day-to-day administration of the country, and that it was his intention to carry out the undertaking faithfully. The Muslim League, on the other hand, wanted parity with the Congress in the new government to which the Congress was irrevocably opposed. In the tentative suggestions which the Viceroy sent to the Congress President this principle of parity had been accepted. On this the Congress President wrote a long letter to the Viceroy from which the following extracts are given :

'In the composition of the cabinet suggested by you there is parity between the Hindus including the Scheduled Classes and the Muslim League ; the number of Caste Hindus is actually less than the nominees of the Muslim League. The position is thus worse than it was in June 1945 at Simla where, according to your declaration then, there was to be parity between Caste Hindus and Muslims, leaving an additional seat for the Scheduled Caste Hindus. The Muslim seats were not reserved for the Muslim League only but could include non-League Muslims. The present position thus puts the Hindus in a very unfair position and at the same time eliminates the non-League Muslims. My Committee are not prepared to accept such a proposal ..... We are opposed to parity in any shape or form.'

There were other points also regarding which the Congress did not accept the suggestions made by the Governor General.

**The Statement of June 16.**— The Working Committee could not accept the proposals made from time to time by the Viceroy for securing the participation of the Congress in the interim national government, as they were unfair and unjust to the Congress and to smaller minorities. It therefore became necessary for the Cabinet Mission and the Viceroy to set forth their proposals for the establishment of the Interim Government. They issued a statement on June 16, 1946. The following are the important extracts from it :

'His Excellency the Viceroy, in consultation with the members of the Cabinet Mission, has for some time been exploring the possi-

bilities of forming a coalition government drawn from the two major parties and certain of the minorities. The discussions have revealed the difficulties which exist for the two major parties in arriving at any agreed basis for the formation of any such government.

'The Viceroy and Cabinet Mission appreciate these difficulties ... They consider that no useful purpose can be served by prolonging the discussions. It is indeed urgently necessary that a strong and representative Interim Government should be set up .....

'The Viceroy is therefore issuing invitations to the following to serve as members of the Interim Government on the basis that the constitution-making will proceed in accordance with the Statement of May 16 : Sardar Baldev Singh, Sir N. P. Engineer, Mr. Jagjivanram, Pandit Jawahar Lal Nehru, Mr. M. A. Jinnah, Nawabzada Liaquat Ali Khan, Mr. C. Rajagopalachari, Dr. H. K. Mehta, Dr. John Mathai, Nawab Mohammad Ismail Khan, Khwaja Sir Nazimuddin, Sardar Abdur Rab Nishtar, Sardar Vallabhbhai Patel, and Dr. Rajendra Prasad. If any of those invited is unable for personal reasons to accept, the Viceroy will, after consultation, invite some other person in his place.

'The Viceroy will arrange the distribution of portfolios in consultation with the leaders of the two major parties.

'In the event of the two major parties or any of them proving unwilling to join in the setting up of a Coalition Government on the above lines, it is the intention of the Viceroy to proceed with the formation of an Interim Government which will be as representative as possible of those willing to accept the Statement of May 16th'.

The Viceroy sent a copy of the Statement to the Presidents of the Congress and the Muslim League and hoped that the parties would take their share in the administration of the country. He appealed to them 'to look to the wider issue and to the urgent need of the country as a whole and to consider this proposal in a spirit of accommodation'.

**Congress rejects the June 16 Plan.**— The Congress Working Committee met at Delhi on June 25 and the following days, and after full consideration and deliberation reluctantly came to the conclusion that they could not join the proposed Interim Govern-

ment. Their reasons for doing so were numerous and were set out in a long letter dated June 25, addressed to the Viceroy. It is not necessary to state all of them; reference can be made only to a few important ones. In view of its *national* character and the presence of Muslims in its membership it insisted on the right of including a nationalist Muslim among the Congress representatives in the Interim Government. The Viceroy and the Cabinet Mission did not find themselves in a position to accept this demand, because Mr. Jinnah strongly objected to it. In one of his letters to Mr. Jinnah Lord Wavell agreed to treat the Scheduled classes as a minority and to consult the leader of the Muslim League in case the question of selecting a person to fill the seat reserved for this community arose in the future. The Viceroy had also made other commitments to Mr. Jinnah which were bound to render the smooth working of the Interim Government very difficult and the occurrence of deadlocks a certainty. It is not surprising that the Working Committee found themselves unable to assist the Viceroy in the formation of the Interim Government as proposed in the Statement of June 16. They, however, accepted the Cabinet Mission Plan of May 16, and agreed to join the Constituent Assembly while adhering to their own interpretation of some of the clauses of the Statement.

The following extract from the resolution of the Working Committee passed on June 26, 1946, lucidly sums up the Congress position in regard to the long-term and short-term plans of the Cabinet Mission.

'In the formation of a provisional or other government Congressmen can never give up the national character of the Congress or accept an artificial and unjust parity, or agree to the veto of a communal group. The Committee are unable to accept the proposals for the formation of an Interim Government as contained in the Statement of June 16. The Committee have however decided that the Congress should join the proposed Constituent Assembly, with a view to framing the constitution of a free, united and democratic India.'

The Muslim League, as has been indicated already, passed a resolution on June 6, 1946, accepting the scheme and expressing its willingness to join the constitution-making body while keeping in view 'the opportunity and the right of secession of Provinces or Groups from the Union which have been provided in the Mission's plan by implication'. Its President carried on prolonged corres-

pondence with the Viceroy in connection with the formation of the Interim Government, and was looking forward to its establishment when, on account of the decision of the Congress Working Committee to accept the Statement of May 16 and to reject that of June 16, the Viceroy 'felt that it would be better to have a short interval before proceeding with further negotiations for the formation of an Interim Government'. The Cabinet Mission issued a statement on June 26 in which they welcomed the 'statements made to them by the leaders of the Congress and the Muslim League that it is their intention to try and work in the Constituent Assembly', and regretted that it had not proved possible to form an Interim Coalition Government. They also wished that efforts should be renewed 'in accordance with the terms of paragraph 8 of their statement of June 16th'. Meanwhile a temporary Caretaker Government of officials was to be set up to carry on the work of the government and of elections to the Constituent Assembly. The Cabinet Mission left for England on June 29; and on that very day the names of the 7 members of the Caretaker Government were announced.

**The Attitude of the Sikhs and other Groups towards the Mission.**-- In the preceding account of the Cabinet Mission and their proposals no reference has been made to the attitude taken up by the Sikhs, the Hindu Mahasabha, the Indian States, the States' peoples, and other sections of public opinion in the country; attention has been concentrated on the reactions of the two major political parties only, the Congress and the League. A few words may be added about the attitude of the other bodies also.

The Sikh representatives expressed their determined and unequivocal opposition to Pakistan and told the mission that in no case would the Sikhs agree to the establishment of Pakistan. In case Pakistan was granted in opposition to their wishes, they would insist upon the establishment of an independent Sikh State. The Sikh League condemned the Plan of May 16 and exhorted the Sikhs to prepare themselves for the struggle that lay ahead. There is no doubt that the statement of May 16 was in many ways unfair to the Sikhs. Though it recognised them as an important minority—third in importance in the whole country—and gave them separate representation in the Constituent Assembly, it failed to provide any

safeguards for them similar to those provided for the Muslims. The main grievance of the Sikhs was that the Plan 'throws them entirely at the mercy of the Muslims and does not give them the same right as is given to the Muslims and the Hindus under Section 15 (2), and 19 (7). The Congress Working Committee, however, ultimately succeeded in inducing them to send their representatives to the Constituent Assembly on the promise of safeguarding their rights and interests.

The Working Committee of the Hindu Mahasabha also condemned the proposal of the Cabinet Mission, particularly the virtual concession of Pakistan, parity of representation, and European participation in the Bengal-Assam Constituent Assembly, i. e., in Section C of the Constituent Assembly. The All-India-Committee of the Sabha 'notes that the fundamental principle of the Hindu Mahasabha, viz., the unity and integrity of India, has been accepted only in theory by the Cabinet Mission ..... but in practice it is whittled down ..... The dominant idea behind the Cabinet Mission Scheme is to appease the Muslim League to the detriment of the other minorities.' It was opposed to the 'three-decker constitution ..... which will place the Hindus of the Panjab, Bengal, Assam, Sind, the N. W. F. P. as well as the entire Sikh community at the mercy of the Pakistanis .....' It also demanded the withdrawal of the artificial system of grouping and sub-federation.

With regard to the attitude of the Indian Princes only this much need be said that the general opinion at the meeting of the Rulers and their Ministers held at Bombay on the 7th of June, 1946, under the chairmanship of the Nawab of Bhopal, Chancellor of the Chamber of Princes, was in favour of accepting the proposals put forward by the Cabinet Mission.

The General Council of the All India States' Peoples Conference passed a resolution which noted with regret and surprise that representatives of States' peoples were completely ignored by the Cabinet Delegation in their talks and consultations, and demanded that the peoples of the States should have a hand in the choice of the representatives of the States to the Constituent Assembly, and that their representatives should be included in the Negotiating Committee to be set up in terms of the Statement of May 16.

**Mahatma Gandhi on the Cabinet Mission Statement.**— The Congress Working Committee, the Council of the Muslim League, the Sikh Conference, the Working Committee of the Hindu Mahasabha, and other bodies of public opinion in the country looked at and examined the Cabinet Mission statement from their different and conflicting points of view, and were naturally critical of it as it could not satisfy any party completely. Mahatma Gandhi examined it from a different angle and felt convinced that 'it is the best document the British Government could have produced in the circumstances ..... It reflects our weakness, ..... if we would be good enough to see it. The Congress and the Muslim League did not and could not agree ..... The authors of the document have gathered ..... the minimum they thought would bring the parties together for framing India's charter of freedom. Their one purpose is to end British rule as early as may be. They would, if they could, by their effort leave a united India not torn asunder by internecine quarrel bordering on civil war ..... There are other things in the document which would puzzle any hasty reader who forgets that it is simply an appeal and an advice to the nation showing how to achieve independence in the shortest time possible.' Mahatmajee was not unmindful of the vital defects in the Plan. He pointed them in an article in the *Harijan* of June 2, 1946. It is not necessary to refer to them here ; our aim was to show how far he was appreciative of it in the midst of the chorus of criticism and condemnation by other parties.

**Formation of the National Government.**— As has been stated earlier the Cabinet Mission left for England on June 29, after having laboured for about four months to straighten out the Indian problem without much success. The Congress accepted the long-range scheme of May 16, but rejected the short-range plan of June 16 ; it agreed to participate in the Constituent Assembly but declined to join the Interim Coalition Government as it felt that the terms as proposed by Lord Wavell were unfair to the Hindus and other minorities. The Muslim League manoeuvred hard to form the government in the absence of the Congress, but the Governor-General did not agree. Lord Wavell continued his efforts to form a Coalition Government, and on July 22 communicated to the Presidents of the Congress and the League the following fresh

proposals for their consideration : '(i) The Interim Government will consist of 14 members of whom six will be nominated by the Congress (one of them is to be a representative of the Scheduled Classes), five will be nominated by the Muslim League, and three by the Viceroy as representatives of the other minorities. One of the last three will be a Sikh. (ii) It will not be open to either the Congress or the Muslim League to object to the names submitted by the other party, provided they are acceptable to the Viceroy. (iii) Distribution of portfolios will be decided after the parties have agreed to enter the Government and have submitted their names. The Congress and the Muslim League will each have an equitable share of the most important portfolios. (iv) I would welcome a convention, if freely offered by the Congress, that major communal issues can only be decided by the consent of both the major parties. A coalition Government can work on no other basis.'

The League refused to join the Coalition Government for two reasons. The proposals were not acceptable to it because they constituted a departure from the principle of Congress-League parity on which the League had laid stress since the Simla Conference held in July 1945. Further they gave to the Congress the right to include a non-League nationalist Muslim in the list of its nominees. The Congress, on the other hand, accepted the proposals and agreed to join the Interim Government. The Viceroy therefore invited Pandit Jawahar Lal Nehru to make proposals for the formation of the Interim Government. The following communique was issued by the Viceroy on August 24, 1946 :—

'His Majesty, the King, has accepted the resignation of the present members of the Governor-General's Executive Council. His Majesty has been pleased to appoint the following : Pandit Jawahar Lal Nehru, Sardar Vallabhbhai Patel, Dr. Rajendra Prasad, Mr. Asaf Ali, Mr. C. Rajagopalachari, Mr. Sarat Chandra Bose, Dr. John Mathai, Sardar Baldev Singh, Sir Shafaat Ahmad Khan, Mr. Jagjivan Ram, Syed Ali Zaheer, and Mr. C. H. Bhabha. Two more Muslim members will be appointed. The Interim Government will take office on September 2.'

Thus was solved the problem of setting up the Interim Government. The solution did not, however, have the approval and consent of the League. The latter therefore stayed out of the

Government. The difficulties involved in the formation of the Interim Government should be clearly realised before any judgment on its composition is passed. They were implicit in the fact that the Congress and the League were deeply divided in their objectives and standpoints. The League claimed parity with the Congress in the constitution of the Viceroy's Executive Council in spite of the fact that the Muslims constituted about 25 % of the total population of British India. The Congress could not possibly accept this absurd demand. In the next place, the League would not tolerate the idea of a Nationalist Muslim being appointed a member of the Interim Government. It was on this issue that the Simla Conference broke down and the Congress rejected the Cabinet Mission short-term plan of June 16. There could be no *via media* between the conflicting demands of the League and the Congress in this matter such as the Cabinet Mission proposed in regard to the demand for Pakistan in their plan of May 16. At long last the Viceroy and the British Government recognised the justice of the Congress stand and therefore put forth the proposals of July 22 as the most suitable and equitable basis for the formation of the Interim Government.

**The League Reaction : Direct Action.**— But the decision of the Viceroy to form the Interim Government on this basis drove the Muslim League into a policy of non-cooperation with the Mission. By its resolution of July 29, the League Council withdrew support to the long and short term plans of the Cabinet Mission and decided to resort to *direct action* for the achievement of Pakistan. It is not necessary here to refer to the angry out-burst of Mr. Jinnah and the charge of eating their words which he levelled against the Cabinet Mission.

The Muslim League fixed August 16 as the 'Direct Action' day. The direct action was not directed against the alien authority of the British Government as the direct action of the Congress had been ; it was not resorted to for the wresting of Pakistan from the hands of an unwilling Government. It was directed against the Hindus. It set the Hindus and the Muslims into two warring camps, and was directly responsible for the bloodshed and beastiality which the residents of Calcutta witnessed for four days in August 1946, for the terrible cruelties inflicted on the Hindus of Noakhali in October of the same year, for the vengeance which the Hindus of Bihar took

upon their Muslim neighbours, and later on, for the horrors and inhumanities perpetrated in the Punjab both before and after the partition. It will serve no useful purpose to rake up the horribile past ; therefore no attempt is made here to dish up and narrate the blood-curdling events that took place at various places in the country for more than a year after the 16th of August 1946. But this much must be pointed out that while Hindu property was being looted, burnt and destroyed and Hindu men and women murdered in Calcutta, the police and the guardians of law and order stood as dolls in the face of this anarchy. The Government failed to take steps to bring under control the carnage in Calcutta for the first two or three days. This was in sharp contrast to the steps taken by the British Government to suppress the revolt of August 1942. The reason for the difference is to be found in the fact that a Muslim League Ministry was functioning in Bengal and its Premier, Shri H. S. Suhrawardy, wanted to create an impression on the Hindus and the Congress. No high official of the Central Government paid any visit to Calcutta and Noakhali, and the Muslim League leaders did not utter a word of condemnation of the barbarities and acts of gangsterism committed by their followers.

**The League enters the Interim Government.**— The resolution of the Muslim League Council rejecting the long and short term plans of the Cabinet Mission and recommending 'direct action' for the achievement of Pakistan did not discourage Lord Wavell. On the contrary, he renewed his efforts to induce the League to rescind its resolution, join the Interim Government and take part in the work of the Constituent Assembly. He was partially successful. The League agreed to enter the Executive Council, but did not rescind its resolution which rejected the long-range plan of the Cabinet Mission. In other words, while giving the Muslim League five seats in his Executive Council, the Viceroy did not obtain from it the promise of participating in the work of constitution-making. This was a great mistake as later events showed. In the second place, it should be remembered that the League did not enter the Interim Government with any intention of cooperating with the other parties in bringing Independence nearer, or with a view to making it function like a dominion cabinet ; it joined it in order to get a foothold to fight for its cherished goal of Pakistan, and to work 'as the sentinel

of exclusively Muslim interests'.\* Under such circumstances there could be no 'joint responsibility' of the Executive Council ; it could not function as a cabinet. The expectation that sheer pressure of events will force the Executive Council into common action and collective responsibility in matters of high policy did not materialise. The experience of a few weeks led Pandit Nehru to remark that since the entrance of the Muslim League representatives on the 26th of October Lord Wavell had been removing 'one by one the wheels of the Cabinet coach', and bringing it to a standstill, so that the Central Government could not do anything on the lines on which the Congress leaders had hoped to advance the reconstruction of the country's economy. In a speech delivered during the annual session of the Congress held at Meerut Pandit Nehru declared that the Muslim League had been acting as the King's party. The Government of India had become a collection of administrative departments ; it was not an integrated whole which the Congress was trying to make it. How far the failure to develop *de facto* collective responsibility was due to the heterogeneous composition of the Executive Council, how much to the intransigence of the Muslim League, and how much to external wire-pulling is difficult to estimate. It is no use trying to apportion blame.

The entry of the five nominees of the Muslim League in the Interim Government necessitated its reconstitution. The New Interim Government which was formed on October 26, 1946, consisted of 14 persons, six of whom were Congressmen, five Muslim Leaguers and three belonged to other minorities. It was thus nicely balanced as between communities and also as regards distribution of important portfolios.

**The League and the Constituent Assembly.**— It has been pointed out above that the League passed a resolution rejecting the Cabinet Mission Plan of May 16. When Lord Wavell wanted to bring the League representatives in the Interim Government, Pandit Nehru asked for specific assurances from the League that it would

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\* Mr. Jinnah, explaining his position to a group of foreign correspondents, said that he did not regard the new set-up in the Central Government as either a Cabinet or a Coalition Government ; it was simply the Executive Council of the Governor General formed under the Government of India Act of 1919. It can be concluded that he wanted neither responsible government nor Dominion Status in action ; what he seemed to desire was to free Lord Wavell from Indian control.

cooperate in the work of the Government and the Constituent Assembly. In reply the Viceroy wrote to Pandit Nehru as follows: 'Mr. Jinnah has assured me that the Muslim League would come into the Interim Government and the Constituent Assembly with the intention of cooperating.' But when invitations were issued over the Viceroy's signature on November 25, 1946, to the members of the Constituent Assembly elected by Provincial Legislative Assemblies, to assemble at New Delhi on December 9 to transact business outlined in the Cabinet Mission Statement, Mr. Jinnah declared: 'In these circumstances, it is obvious that no representative of the Muslim League will participate in the Constituent Assembly, and the Bombay resolution of the League Council passed on July 29 stands.'

As a matter of fact when the Constituent Assembly met at New Delhi on December 9, the Muslim League members were conspicuous by their absence. Why under these circumstances the League members should have been allowed to remain in the Interim Government is very difficult to explain. It may also be mentioned that when asked in the course of a press conference if he had made any promise to Lord Wavell to call a meeting of the League Council to reconsider and rescind the resolution of July 29, Mr. Jinnah categorically said that he never made any promise of that sort.

**Summary.**— The political situation as it developed in the country after the departure of the Cabinet Mission in July 1946, may be summed up thus. The Congress accepted the long-range plan of the Mission, and also joined the Interim Government. The Muslim League at first accepted both the long and short-range plans of the Cabinet Mission, but at a later stage rejected both of them. Inspite of this rejection, Lord Wavell took five nominees of the League in the Interim Government without first securing a formal withdrawal of the League Council resolution of July 29. Inside the Interim Government it soon became evident that the Muslim League had absolutely no intention to cooperate with the Congress members in developing the spirit of joint responsibility; its nominees had gone there to resist attempts which might prejudice or militate against the demand for Pakistan directly or indirectly. The Interim Government was thus disintegrating. The Viceroy issued invitations to the members of the Constituent Assembly to meet at Delhi on

December 9. The Muslim League, however, refused to participate in its work and directed its members to abstain from attending the session. In short, the proposals of the Cabinet Mission did not bear any fruit ; the Congress and the Muslim League, the two major political parties, were no nearer to each other towards the close of 1946 than they were at its commencement.

**London Conference.**— In view of these developments Lord Wavell began consultations with the British Cabinet as a result of which the British Prime Minister invited the Viceroy, Pandit Nehru, Sardar Vallabhbhai Patel, Mr. Jinnah and Mr. Liaquat Ali Khan to a Conference in London. The Congress leaders were unwilling to proceed to London as they apprehended that the Conference was being called to re-open and reconsider the various decisions arrived at since the arrival of the Cabinet Mission, and that any variation or modification of them would mean giving in to the League intransigence and incitement to violence. Mr. Attlee cabled to Pandit Nehru that there was no intention of either abandoning the decision of the Constituent Assembly to meet on the date fixed for the purpose, or modifying or giving up the Cabinet Mission Plan. It was the desire of His Majesty's Government to secure its implementation in full. Thereupon Pandit Nehru and Sardar Baldev Singh left for London to take part in the Conference.

The main question discussed at the London Conference seems to have been the vexed question of the Grouping of Provinces. The Congress was all along of the opinion that the Provinces were free to join a Group or keep out of it ; this was the necessary implication of the autonomy of Provinces on which the Cabinet Plan had laid great stress. The League held a different view and maintained that whether Groups were to be formed or not was to be decided by the members assigned to each Section by a majority of votes ; no Province was free to exercise its choice in the matter. It may be stated here that Assam and the N. W. F. P. protested from the very beginning against their being under the Sections to which they had been assigned by the Mission Plan. The Conference failed to arrive at an agreed conclusion and therefore failed in its purpose of obtaining the participation and co-operation of all the parties in the Constituent Assembly. The statement issued by His Majesty's Government on the London Conference contained the views of the

Mission on this vital question. They deserve to be quoted in full.

'The main difficulty that has arisen has been over the interpretation of paragraph 19 (5) and (8) of the Cabinet Mission Statement of May 16, relating to meeting in sections .....

'The Cabinet Mission have throughout maintained the view that the decisions of the sections should, in the absence of an agreement to the contrary, be taken by a simple majority vote of the representatives in the sections. The view has been accepted by the Muslim League, but the Congress have put forward a different view. They have asserted that the true meaning of the statement, read as a whole, is that the provinces have the right to decide both as to grouping and as to their own constitutions.

'His Majesty's Government have had legal advice which confirms that the Statement of May 16 means what the Cabinet Mission have always stated was their intention. This part of the Statement, as so interpreted, must therefore be considered an essential part of the scheme of May 16 for enabling the Indian people to formulate a constitution which His Majesty's Government would be prepared to submit to Parliament. It should therefore be accepted by all parties in the Constituent Assembly.

... ... ... ... ...

'There has never been any prospect of success for the Constituent Assembly except upon the basis of the agreed procedure. Should a constitution come to be framed by the Constituent Assembly in which a large section of the Indian population has not been represented, His Majesty's Government could not, of course, contemplate— as the Congress have stated they would not contemplate— forcing such a constitution upon any unwilling parts of the country.'

Though the London Conference failed to resolve the differences between the Congress and the League, it yielded rich dividends to Mr. Jinnah. In the first place, it secured the endorsement of the British Government to the League interpretation of the clause concerning the grouping of Provinces which was a vital part of Cabinet Mission scheme. In the second place, it gave to the Muslim League the assurance that a constitution framed by a Constituent Assembly in which it was not represented would not be forced upon the Muslim community. The Congress leaders drew a contrast between this statement and a previous declaration of Mr. Attle in which he had declared that no minority would be allowed to hold up the political progress of the majority. In the third place, it provided a handle to the Muslim League to justify the continued presence of its nominees in the Interim Government notwithstanding its refusal to accept the Statement of May 16. It argued that the Congress also could not be said to have accepted the said scheme until it accepted the principle

of grouping as interpreted by the Mission.

**Congress Reaction to the London Conference.**— The Congress Working Committee and the A. I. C. C. considered the statement of December 6, and resolved that '..... with a view to removing the difficulties that have arisen owing to varying interpretations, they agree to advise action in accordance with the interpretation of the British Government in regard to the procedure to be followed in the Sections. It must be clearly understood, however, that this must not involve any compulsion of a province and that the rights of the Sikhs in the Punjab should not be jeopardised .....

**The Constituent Assembly.**— Meanwhile the Constituent Assembly met for its first session on December 9, 1946, as originally fixed. The Congress leaders did not accept the plea of Mr. Jinnah for its postponement because they thought that it was merely a device to secure delay in the hope that something might turn up during the interval which the League might use to its own advantage.

On the first day 207 members out of a total of 286 elected from British India attended the session. All the Muslim League members numbering 74 were absent. Only four Muslims who were Congressmen and were returned on the Congress ticket were present. The late Dr. Sachchidanand Sinha, the veteran leader of Bihar and the oldest member of the Constituent Assembly, was elected temporary chairman to conduct the meetings until the choice of the permanent President. In his inaugural address Dr. Rajendra Prasad, the permanent President, laid stress on the claim of the Constituent Assembly to be 'a self-governing and self-determining independent body in whose proceedings no outside authority can interfere and whose decision no one outside can upset, alter or modify.' Four days later Pandit Jawahar Lal Nehru moved a resolution outlining the objectives of the Constituent Assembly ; namely, the creation of an independent, sovereign republic. It does not fall within the scope of this chapter to give an account, however brief, of the deliberations of the Constituent Assembly and the character of the constitution it hammered into shape. We shall here state only this much that on account of the uncertainty about the attitude of the Muslim League a feeling of indecisiveness marked the proceedings of the first two sessions. It may also be mentioned that all the great leaders of the country who had guided and moulded the activities

of the Congress during the preceding half a century and were managing its affairs when the Constituent Assembly was constituted, e. g., Pandit Nehru, Sardar Patel, Maulana Azad, Shri Rajagopalachari, Acharya Kripalani, Pandit Govind Ballabh Pant, adorned its benches and contributed to the task of constitution-making. Mahatma Gandhi, the Father of the Nation, was the only great leader who was not its member. He was engaged elsewhere in the noble and peaceful mission of establishing communal peace and harmony and giving solace to suffering humanity in Noakhali and Bihar.

**Britain Decides to Quit India.**— The open rebellion of 1942 had given ample proof not only of the 'pluck, courage and intrepidity' of the people of India, but also of their determination to be free and their 'latent powers of impromptu organisation. Their detestation of foreign rule and resolve to be free were further revealed by the events which took place during the two concluding months of 1945 and the first six months of 1946. There were countrywide demonstrations in which people of every shade of political opinion took part for the release of Major Seghal, General Shah Nawaz, and Captain Dhillon, leaders of the Indian National Army or Azad Hind Fauj, who had been tried in the Red Fort of Delhi and sentenced to long terms of imprisonment. On Nov. 19, 1945, the students of Calcutta staged a demonstration and wanted to march towards the Dalhousie Square. They were stopped by the police and asked to go back. They refused to return and squatted on the roadside. The police opened fire on them without any provocation. This was the signal for rioting on a mass scale. Many persons were killed. The Government had to remove the ban and allow the students to march to and enter Dalhousie Square. The lesson of these demonstrations was not lost upon the Government.

In February 1946 there was again an upsurge in connection with the demand for the release of Abdul Rashid, another I. N. A. prisoner, in which Hindus and Muslims were united. In Bombay there was a serious mutiny on the part of naval ratings who demanded the abolition of racial discrimination in the treatment meted out to them. There was a great hartal in the city in sympathy with the mutineers. The mutiny spread to Karachi and Madras, and there were sympathetic strikes in the air and police forces. The naval ratings surrendered after a heroic struggle only when the

leaders of the Congress intervened and asked them to give in on the assurance that their demands would be looked into, and that there would be no victimisation. A little later there was a strike of Indian Signal Corps at Jubbulpore, and also among the police force at Delhi and in Bihar. All these events made the British statesmen realise that they could not hope to maintain their rule in India on the old basis for long.

Then there was the great Calcutta killing of August 1946, the frenzy of communal hatred which burst out in Noakhali and Tipperah in East Bengal, the reaction produced by these tragedies in Bihar and the U. P., and the large scale disturbances that took place in Lahore, Rawalpindi and Multan in March-April, 1947. All these events showed that the administrative structure in India was cracking. Nor were the conditions within the Interim Government any better. It is no exaggeration to say that history hardly supplies an instance of parties in a coalition so determined not to cooperate with each other as the Congress and the League. The Congress demanded that the League must quit the Interim Government as it was not cooperating in the work of the Constituent Assembly. The League retorted that the Congress must leave the Government because it did not accept the plan of May 16 in its entirety. The situation was thus fast getting out of hand. Added to this unhappy situation in the country was the fact that the Second World War had left Great Britain weak as a world power. Her statesmen found that they could not easily bear the burden of the Empire. All these things led the British Labour Government to the conclusion that they should quit India by a certain fixed time whether the Congress and the League came to any understanding or not. It is no doubt true that the British Government could have mustered force enough to hold India down for a few more years. A Conservative Government headed by an enemy of Indian aspirations like Mr. Churchill would have, in all likelihood, adopted such a course. The Labour Government, however, very wisely realised that by retiring with grace and with expressions of goodwill they may be able to preserve the bulk of their economic interests for a long period. Accordingly, Mr. Clement Attlee, the British Prime Minister, made a statement in the House of Commons on February 20, 1947, in which he announced the decision of His Majesty's Government to hand over power to

the people of India by a date not latter than June 30, 1948. The following is the operative part of the announcement :

"His Majesty's Government desire to hand over responsibility to authorities established by a Constitution approved by all parties in India, in accordance with the Cabinet Mission Plan. But, unfortunately, there is at present no clear prospect that such a constitution and such authorities will emerge. The present state of uncertainty is fraught with danger and cannot be indefinitely prolonged. His Majesty's Government wish to make it clear that it is their definite intention to take the necessary steps to effect the transference of power to responsible Indian hands by a date not later than June 1948."

The Statement also contained the following significant provision :

"If it should appear that such a constitution will not have been worked out by a fully representative Assembly before the time mentioned in paragraph 7, His Majesty's Government will have to consider to whom the powers of the Central Government in British India should be handed over on the due date, whether as a whole to some form of Central Government for British India or, in some areas, to the existing Provincial Governments, or in such other way as may seem most reasonable and in the best interests of the Indian people."

The first part of the statement was hailed by Pundit Nehru as bringing 'reality and a certain dynamic quality to the present situation in India', and as removing 'misconception and suspicion'. The second part was construed by Mr. Jinnah as conceding the demand for Pakistan. There can be little doubt that it did add to the strength of League separatism. The Congress Working Committee also considered the statement of February 20, and welcomed the definite intention of His Majesty's Government to transfer power finally to the Indian people and to take steps in that direction. It further reiterated its acceptance of the statement of May 16, 1946, and the interpretation put upon it by the British Government in their announcement of December 6, and invited the Muslim League to nominate its representatives to meet the representatives of the Congress to consider the situation and devise the means to meet it. The League ignored the invitation.

**The Recall of Lord Wavell.**— It need hardly be pointed out that the Muslim League found great encouragement in the statement of Mr. Attlee that when the time for handing over power to people of India would arrive, His Majesty's Government would consider whether power would be transferred to some form of

Central Government as a whole or in some areas to existing Provincial Governments. It therefore became even more intransigent than before ; and thinking that power would be transferred to those who happened to be in actual possession of it at the time of withdrawal, it began a mad struggle to acquire power in the Punjab, the N. W. F. P. and Assam. It is not necessary to describe the tactics adopted by the League in all these provinces ; it should be sufficient to say that its attempts led to serious communal disturbances in various parts of the Punjab and the N. W. F. P., and to a so-called campaign of civil liberties in Assam. The Governor of the Punjab was believed to be partial towards the League, but he failed to instal a League Ministry in the province where Section 93 had to be applied on the resignation of the Coalition Government.

These ugly developments probably led the British Government to recall Lord Wavell and replace him by Lord Louis Mountbatten as the Viceroy and Governor General of India. An announcement to this effect was made by Mr. Attlee on February 20, 1947. Lord Mountbatten was sworn in as the Viceroy on March 23.

Immediately after his arrival in India, Lord Louis Mountbatten applied himself to the task for which he was commissioned ; namely, to arrange for the transfer of power to responsible Indian leaders in the smoothest and quickest way. He brought to bear upon it a fresh mind and outlook. He spent day after day in holding consultations with as many of the leaders and representatives of as many communities and interests as possible. He held several talks with Mahatma Gandhi and with Mr. Jinnah. In these talks and consultations he endeavoured to acquaint himself with their points of view and opinions, and urged upon them the necessity of unreservedly accepting the Cabinet Mission Plan of May 16. But he soon realised that it was impossible to obtain their agreement either on the Cabinet Mission Plan or any other scheme that sought to preserve the unity and integrity of India. As there could be no question of coercing the Muslims to live under a system of government in which the Hindus would have a predominant position, it was clear that partitioning the country was the only way to solve the problem. But it also became clear that, consistently with the declaration of the Cabinet Mission— 'nor can we have any justification for including within a sovereign Pakistan those districts of the

Punjab and of Bengal and Assam in which the population is predominantly non-Muslim'— and because of considerations of fairplay, the demand of the Congress and the Sikhs for the division of the Punjab and that of the Hindu Mahasabha and the Congress for the division of Bengal could not be rejected. Every argument that could be used in favour of Pakistan could be applied with equal force and justice to exclude non-Muslim areas of the Punjab and Bengal from Pakistan. Pandit Jawahar Lal is reported to have said that the Muslim League could have their Pakistan provided they did not claim anything more than what they were entitled to on the population basis. Dr. Rajendra Prasad, President of the Constituent Assembly, in the course of an interview declared that if there was to be the division of India, then it should be as complete and thorough as possible, so that there may be no occasion for any sort of dispute or conflict in the future, and 'if that requires division of the defence forces, that should also be brought about, and the sooner, the better.'

The line of argument appeared unassailable to Lord Mountbatten. Mr. Jinnah had to give way and accept a mutilated Pakistan, though he was vehemently opposed to the move of partitioning Bengal and the Punjab. He denounced it as a move 'actuated by spite and bitterness'. It seems that through the mediation of Lord Mountbatten the details of the division were settled between the Congress and the League leaders. Lord Mountbatten left for England on May 18, to hold final discussion with His Majesty's Government. He returned on June 2, and a statement was issued on June 3 containing the proposals for the transfer of power to one or two successor governments.

**The Statement of June 3, 1947.**— It is an announcement possessing great importance and therefore, deserves more than a passing notice. We shall state the main and operative part of it.

It referred to the hope of His Majesty's Government that the two major Indian parties would co-operate in working out the Cabinet Mission Plan of May 16, 1946, which remained unfulfilled, because the Muslim League members elected from the Punjab, Bengal, Sind, etc., did not participate in the work of the Constituent Assembly. Though it was not the intention of His Majesty's Government to interrupt the work of the Assembly, they could not

apply the constitution framed by the Constituent Assembly to those parts of the country which were unwilling to accept it. The Statement laid down the procedure to be adopted for ascertaining the wishes of such areas on the issue as to how the constitution for them was to be framed. The procedure is stated in paragraphs 5-13 of the Statement. It may be summed up as under :

The Legislative Assemblies of Bengal and the Punjab (excluding the European members) were to meet each in two sections or parts, one representing the Muslim majority districts and the other the rest of the province. (The names of the Muslim majority districts in both the Provinces were set forth in the Statement itself.) Each part was to decide by a simple majority whether the province was to be partitioned or not. If either part were to decide in favour of partition, division was to be made accordingly. If partition of the Province were decided upon, each part of the Assembly was to determine if it would like to join the Constituent Assembly functioning at Delhi, or a new and separate Constituent Assembly consisting of representatives of those areas which decided not to participate in the existing Assembly. It may be mentioned in passing that the Hindu members of the Bengal Assembly voted for the partition of Bengal on June 20, and those of the Punjab Assembly voted in the same manner three days later. One can say that whereas the national Muslim minority decided to divide the country, the provincial Hindu minorities decided upon the division of the provinces.

The Legislative Assembly of Sind was to decide at a special meeting whether Sind as a whole was to join the Constituent Assembly at Delhi or a new Constituent Assembly of areas which decided not to join it. It voted for Pakistan on June 26.

Assam is a non-Muslim Province, but one of its districts, namely, Sylhet, is contiguous to East Bengal and is predominantly Muslim. There was a demand that in the event of the partition of Bengal, a referendum should be held in it to decide whether it should remain a part of Assam or it should be amalgamated with the new province of East Bengal. The people of Sylhet decided to join the new province of East Bengal.

A special procedure was recommended for North West Frontier Province. A referendum was to be made to the electors of the Provincial Legislative Assembly to choose whether to join Pakistan.

or to remain in the Indian Union. The referendum was to be held under the aegis of the Governor General and in consultation with the Provincial Government. The decision was not left to the Provincial Assembly as it was left in the case of the Punjab, Bengal and Sind. The referendum was held between July 6 and July 17. It was boycotted by the Congress. The electors decided in favour of Pakistan. British Baluchistan also opted in favour of Pakistan on June 29.

Another thing of great importance in the Statement of June 3 was the fact that it brought the date of the transference of power from British to Indian hands much nearer than the one fixed by the Statement of February 20. . The following is the operative part of paragraph 20. 'The major political parties have repeatedly emphasised their desire that there should be the earliest transfer of power in India. With this desire His Majesty's Government are in full sympathy..... As the most expeditious, and indeed the only practical, way of meeting this desire, His Majesty's Government propose to introduce legislation during the current session for the transfer of power this year on a Dominion Status basis to one or two successor authorities .....

The Indian Independence Bill was passed by the British Parliament without a division and with a speed unprecedented in British history. It was in accordance with the provisions of this Act that the two separate and independent Dominions of India and Pakistan came into existence on the 15th of August 1947, at zero hour.

The All India Congress Committee met at Delhi on June 14 and 15 to discuss the Statement of June 3 ; and even though the Congress had laboured hard since its inception for the realisation of a free and *united* India, it accepted the proposals embodied in the Statement. It would not be out of place briefly to discuss the reasons which seem to have led the Congress to accept the partition, and to appraise them.

**Partition Inevitable.**— The division of the country into India and Pakistan was inevitable and unavoidable. It was the logical conclusion of the policy of *divide and rule* which the British rulers had been following for about a century since the unsuccessful War of Independence of 1857. It was also implicit in the feeling of separationism which had been inculcated in the minds of the Muslim masses by the Muslim League since its birth in the first decade of

the present century. It was also implied in the Congress declaration that it could not think 'in terms of compelling the people in any territorial unit to remain in an Indian Union against their declared and established will'. The British Government were committed to it by their various statements and pledges. The declaration of February 20 was a promise of Pakistan to the League. The Congress had no alternative but to accept the inevitable. But what really compelled the Congress leaders to agree to the vivisection of the country was the realisation on the part of the Congress members in the Interim Government that the Anglo-Muslim alliance was doing great mischief and that Indian interests were being betrayed by the British bureaucrats in every department of the state. Referring to the way in which the Political Department was behaving Sardar Patel gave expression to this feeling in the following words : 'It was then that I was made fully conscious of the extent to which our interests were being prejudiced in every way by the machinations of the Political Department, and came to the conclusion that the best course was to hasten the departure of these foreigners even at the cost of the partition of the country. It was also then that I felt that there was one way to make the country safe and strong and that was the unification of the rest of India.' In the speech which he delivered at the special Convocation of the Banaras Hindu University Sardar Patel again referred to the matter in the following words : 'I felt that if we did not accept partition, India would be split into many bits and would be completely ruined. My experience of office for one year convinced me that the way we have been proceeding would lead us to disaster. We would not have had one Pakistan but several. We would have had Pakistan cells in every office.'\*

In this connection it is interesting to note that the Muslim League members of the Interim Government were driving out Hindu and Sikh officers from key positions in their Departments and putting in their places Muslims who could be depended upon to promote the cause of Pakistan. The representative of the *Amrit Bazar Patrika* sent a message to his paper during the second week of May 1946, that inside information available to him showed that Delhi might soon be made the centre of *direct action* on the lines witnessed in the Punjab and the N. W. F. P. In the light of such

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\* Quoted from the Indian Annual Register : January-June 1947, page 112 (e)

developments Congress leaders could not come to any decision other than the one they arrived at; namely, the acceptance of Pakistan in order to drive out the foreigner and save the country from further ruin. Let all those who shed crocodile tears over the dismemberment of the country and talk sentimentally of 'Akhand Hindustan' ponder over the conditions and weigh the evidence of persons like Sardar Patel before condemning the Congress decision in an unthinking manner. The choice before the leaders was between Pakistan and civil war. The force of circumstances led even Mahatma Gandhi to agree to the division, opposed as he was to it from the start.

We think that in spite of the uprooting of millions of men and women from their ancestral hearths and homes and untold and unspeakable sufferings and hardships which a large section of our compatriots in the Punjab and N. W. F. P., Sind and Bengal had to undergo, the partition of the country was a blessing in disguise. It can be regarded as a blessing in so far as it was responsible for the exit from the Indian Union of a group of persons whose extra-territorial sympathies and intensely communal outlook were proving a great stumbling block in the way of our progress. Just as no sensible person weeps over the amputation of a diseased limb in the interest of the preservation of his life and health, we also should not bewail the separation of a part of our countrymen from us; the partition of the country may be regarded as a sort of surgical operation that had become necessary to save the motherland from further bloodshed and anarchy.

In the second place, the Constituent Assembly decided to abolish the vicious system of separate communal electorates root and branch; to bid good-bye to the system of reservation of seats except for the Scheduled Classes for a period of ten years; to adopt Hindi written in Devanagari script as the national language; and to make provision for a strong and powerful central government. Can any one maintain that these decisions could have been arrived at by the Constituent Assembly if the Muslim League members had participated in its proceedings and assisted in the framing of a constitution for the whole of India? One should not forget the clause in the Cabinet Mission Plan of May 16 which prescribed that no decision on any communal issue could be taken unless a majority

of the members of each community supported it. This clause would have effectively barred the way against the abolition of separate communal representation and the adoption of Hindi in Devanagri script as the *lingua franca*. We feel inclined to regard the division of the country as a divine dispensation designed to rid it of undesirable elements. In any case it should be remembered that the division was not imposed upon us by any outside authority and against our will ; it was freely accepted by our ascredited leaders as the price for the welfare of the people and immediate independence. The words of Sardar Patel quoted above should always be kept in mind.

With the passing of the Indian Independence Act by the British Parliament in July 1947 and the coming into being of the Dominion of India (and the Dominion of Pakistan) on the 15th of August our story of the way in which India won freedom comes to a natural end. The Indian National Congress achieved its objective of freeing India from bondage to the foreign yoke, even though it could not secure a free and *united* India. We shall conclude our review with a brief reference to the provisions of the Indian Independence Act and the martyrdom of Mahatma Gandhi.

**The Indian Independence Act of 1947.**— It is an exceedingly simple and brief Act. It was passed by the House of Commons on July 15 and by the House of Lords on July 16. It received the Royal assent on July 18. It contains not more than twenty sections and three schedules. It is simple because it was not designed to expound or explain the policy or intentions of the British Parliament in regard to India but was merely an enabling measure. It was drafted in India and not Britain. Before its presentation to Parliament, the draft Bill was shown to Indian party leaders, Congress and Muslim League, and to Gandhiji. Their comments were taken into consideration in the final revision of the draft. The Secretary of State for India described it as unique in the history of English legislation. Never before did such a large portion of world population acquire complete independence through legislation alone. Its main provisions may be summarised as follows :—

It provided for the setting up of the two independent Dominions of India and Pakistan with effect from the 15th of August 1947, and demarcated the territories of each. The division of the Punjab and

Bengal was to be effected in accordance with the recommendations of the Boundary Commission to be set up for the purpose. As the Commission failed to come to any unanimous conclusion, the division was made according to the award given by its chairman. Each Dominion was to have a Governor-General to represent His Majesty for the purposes of its government, but he was to be a constitutional head acting on the advice of his popular ministers. He was to be appointed by the King. As the usual method of appointing the Governor-General of a Dominion on the recommendation of its Government could not obviously be resorted to in the case of India and Pakistan, the Viceroy consulted the leaders of the Congress as to whom they would like to have as the Governor General of India, and the leaders of the Muslim League about the Governor-General of Pakistan. The persons recommended by these two parties were appointed as the Governors General of the two new Dominions.

Each Dominion was to have a fully sovereign legislature. It was given full powers to make laws for the Dominion. No Act passed by the British Parliament after the 15th of August, 1947, could apply to either Dominion unless it was extended thereto by a law of its own legislature. The right of His Majesty to disallow any bill passed by the legislature of either Dominion was given up, and the Governor-General had full powers to assent in His Majesty's name to any bill passed by it. The powers of the Legislature in each Dominion were to be exercised by its Constituent Assembly. The Act thus made the Constituent Assemblies in the two Dominions fully sovereign bodies (which they were not in terms of the Cabinet Mission Plan). Until the constitution prepared by each Constituent Assembly came into force, each Dominion was to be governed as nearly as possible in accordance with the provisions of the Government of India Act of 1935, subject to such omissions, additions, and adaptations and amendments as might be made by the Governor-General.

Since each Dominion was to have full responsible government on parliamentary lines, the control of His Majesty's Government in Great Britain over the Government of India or Pakistan ceased to exist after the 15th of August. Its responsibilities for the administration of Indian affairs thus came to an end. This necessitated the abolition of the office of the Secretary of State for India and

of the Indian Council. The relations between India and Great Britain became the concern of the Secretary of State for Commonwealth Affairs. The title 'Emperor of India' was dropped from the Royal Titles.

Paramountcy of the Crown over the Indian States also came to an end, and with its lapse all treaties and agreements entered into between the British Crown and the States also came to an end. But existing arrangements between the States and the Government of India were to continue pending detailed negotiations between those States and the government of the new Dominion.

'Thus ended British rule over this country which had lasted for nearly two hundred years and left manifold consequences over all fields of the national life and character. It was a gracious and dignified farewell, a *nunc dimittis*, whereby it was impossible not to be moved—the end, not only of a chapter, but of an era, and at the same time the beginning of a new and glorious journey for this great and ancient land.\*'

The Act of 1947 which brought about this great change in our constitutional history is indeed 'the noblest and greatest law ever enacted by the British Parliament'. The way in which Great Britain handed over power to the people of India as the result of non-violent struggle led by Gandhiji has no parallel in human history, and is likely to remain unique in the annals of the world. There are, however, persons who hold the view that what led Great Britain to decide to quit India was not the non-violent struggle led by Gandhiji but the fact that World War II had left Great Britain weak as a military power coupled with the insurrection among the naval ratings and the disaffection among the police and the army. It is not necessary to enter into any argument on this issue; we would simply state our own view.

There is no doubt that the War had sapped the military strength of Great Britain a good deal; but it is not true that she could not have held India by the sword for some time more. The British statesmen however realised that it was not worth their while to hold sway over a sullen and highly discontented India, that a free and friendly India would be more valuable to England than a dependent but rebellious India. World forces were indeed helpful to us, but the primary force which gave us our Freedom was the

\* R. R. Sethi : *The Last Phase of British Sovereignty in India*, pages 53-4.

sanction Gandhiji had been able to create behind the national demand by non-violent means. Even the revolt of the naval ratings and disaffection among the Behar police was the indirect consequence of the Quit India movement. The following words of Shri Rajendra Prasad spoken in 1947 contain the substance of the truth. He said :

‘While our achievement is in no small measure due to our own sufferings and sacrifices, it is also the result of world forces and events and, last though not least, it is the consummation and fulfilment of the historic tradition and democratic ideals of the British race.’

It must be remembered that at the crucial moment Providence installed a Labour Government in Britain which was committed to Indian Independence.

**The Character of Indian Nationalism**— We would conclude this rather long account of the way India achieved her freedom from British control with a few words about the character of Indian Nationalism.

In one respect our movement is unique in the world. History does not record any other instance in which a subject people have achieved freedom from foreign bondage without shedding the blood of their opponents; radical changes in the political history of the world have always been associated in the past with great violence. India has demonstrated to the world for the first time that a great and mighty revolution can be wrought by non-violent and peaceful means. This means that our national movement was of vital interest not only to us, but was also of great concern to the world at large. Humanity witnessed the discovery and perfection of a new technique of political revolution which produced something like a miracle. When India and England parted, they parted as friends. Gandhiji was the architect not only of a new India, but also of new relations with England. To win freedom from a nation is a great thing, but to win that nation in the process is something much greater. And this is what Indian nationalism achieved.

This feature of Indian Nationalism is inseparably connected with its spiritual basis. In Chapter VI we laid stress on the point that the national movement and the various religious and social reform movements which arose in our country in the last century form part of the great spiritual renaissance of India. The spiritual

character was impressed upon it by Raja Ram Mohan Roy, Swami Dayanand Saraswati, Swami Vivekanand, and above all, by Mahatma Gandhi, who shaped, moulded and guided it from 1919 onwards. It was under his leadership that the Congress adopted *Satyagraha* or non-violence as its method.

The stress on non-violence or *satyagraha* as the means of securing national freedom and the spiritualisation of politics which it entailed have been responsible for some other features of our struggle for freedom. It began as a middle class movement, but developed into a mass movement under Gandhiji who always aimed at the unity of all classes and communities in the struggle. Secondly, it led to the emphasis on the constructive programme which included hand-spinning and the encouragement of khadi, promotion of communal harmony, removal of untouchability, and temperance or abolition of the drink evil. In other words, the national movement in India was not confined to the political sphere alone; it embraced social, religious, economic, and educational spheres as well. It thus aimed at the all-round uplift of the nation. One of its most significant results is the emancipation of the Indian women, and the abolition of untouchability. It is not everywhere that political movements issue into social and economic reforms.

It may also be pointed out that the foreign policy of the Government of India which has steered clear of getting involved in power politics and looks at all international problems with the sole purpose of promoting peace, prosperity and friendliness in the world is the logical issue of the stress on non-violence and the identity of means and ends on which Mahatmajee laid emphasis all his life.

Finally attention may be drawn to the following words of Mahatma Gandhi about the nature of Swaraj. Under the caption 'Lest we forget' he wrote as under in the *Harijan*, dated 29-1-48. 'India has still to attain social, moral and economic independence in terms of its seven hundred thousand villages as distinguished from its cities and towns. The struggle for the ascendancy of civil over military power is bound to take place in India's progress towards its democratic goal.' The uplift of the masses and of the untouchables have been an important concern of the Congress throughout the Gandhian era and after Independence.

## CHAPTER XV

### COMMUNALISM IN INDIAN POLITICS

**Introductory.**— What has been said in the preceding chapter about the cause of the failure of the Simla Conference called by Lord Wavell in 1945, the difficulties encountered by the Cabinet Mission in the formation of the Interim Government, and the division of the country into the two independent states of India and Pakistan, is sufficient to indicate the obstacles put by the demon of communalism in our constitutional advance. The British Government always used the differences between the Hindus and the Muslims as an excuse for withholding the transfer of power to Indian hands. What happened at the second session of the R. T. C., and the way in which Lord Linlithgow put the power of veto in the hands of the minorities in his statement of August 8, 1940, are clear proofs of it. It is therefore necessary to study this question in some detail here, even though it is an old story now.

**Nature of the Problem.**— The communal problem was generally described as the Hindu-Muslim question or the Hindu-Muslim-Sikh question. This mode of designating it is seriously misleading. It suggests that the problem was wholly or mainly religious. It also implies that the Hindus and the Muslims and the Sikhs were the only parties concerned. Both these ideas, though widely prevalent, are wrong. The communal problem was more political than religious; it was chiefly political though it masqueraded under a religious garb.\* British Imperialism had been as important a factor

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\* It is interesting to note that the Simon Commission also came to the conclusion that communal tension 'is a manifestation of the anxieties and ambitions aroused in both communities by the prospect of Indian political future. So long as authority was firmly established in British hands and self-government was not thought of, Hindu-Muslim rivalry was confined within a narrow field— there was little for members of one community to fear from the predominance of the other. The comparative absence of communal strife in Indian States to-day may be similarly explained. Many who are well-acquainted with conditions in British India a generation ago would testify that at that epoch so much good feeling had been engendered between the two sides that communal tension as a threat to civil peace was at a minimum. But the coming of the Reforms and the anticipation of what may follow them have given new point to Hindu-Muslim competition.' Very naturally, the Simon Commission would say nothing about the role of British Imperialism in fostering the communal tension.

in shaping and determining its growth as the clash of political interests between the Hindus and the Muslims. Those who looked upon the problem as rooted in religious differences between the Hindus and Muslims and took no notice of the vital role played by British imperial interests could not view it in a proper perspective. They started from wrong premises and arrived at wrong conclusions with regard to its remedies. The real problem was how to adjust and satisfy the conflicting claims to a share in *political power* made and pressed by the various communities and classes inhabiting India,— by Hindus, Muslims, Sikhs, Christians, Anglo-Indians, Europeans, landholders, industrialists, labour, and those engaged in commerce. The attitude adopted by the British Government not only encouraged some communities to pitch their demands very high ; it also made the solution of the problem by mutual agreement between the communities almost impossible. The contest in India lay between the forces of nationalism as represented by the Indian National Congress, the spirit of communalism as embodied in the Muslim League, the Hindu Mahasabha, etc., and British Imperial interests. There was thus a communal triangle in our country of which British imperialism formed a very important side or arm. This is the main thesis of a very interesting book called '*The Communal Triangle in India*' by Ashoka Mehta and Achut Patwardhan\*.

**Origin of Communalism.**— The spirit of Communalism which invaded Indian politics was the resultant of the interaction between two factors : one, the efforts of an insurgent Indian nationalism to throw off the foreign yoke, and the other, the struggle of British Imperialism against this rising force. In the absence of either of these two forces the phenomenon as it existed in our country till 1947 would not have arisen at all. Of these two factors British Imperialism was the older in the field and stronger. Indian nationalism became self-conscious and assertive at a later date. When it reared its head and became a power to be reckoned with the former tried to checkmate it by counterposing one community in the country against the other. The monster of communalism which soon became the bane of Indian politics was the result of this effort. This much must, of course, be admitted that the British Government did not create the social and religious differences between the

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\* Published by Kitabistan, Allahabad.

Hindus and the Muslims ; it accentuated and exploited them. For our misfortunes we were thus partly to blame. Let us see how the British Government exploited our differences and created the communal problem.

The British statesmen realised at a very early date that the only way to save the small number of Britishers in India from being overwhelmed by the teeming millions of the country and to secure the safety and stability of British rule was to keep the various communities apart from one another and prevent them from uniting in a common effort to overthrow foreign rule. The policy of 'divide and rule', of turning the communities of India one against the other and preventing the welding of them into a single nation, has always been the corner-stone of British administration in this country. Mountstuart Elphinstone, one of the Governors of Bombay during the rule of the Company, wrote as follows : '*Divide et impera* was the old Roman motto, and it should be ours.' Well-versed in this policy 'the British soon after their arrival in India made ready to apply its strategy to the situation in this country. The two great communities of India, the Hindus and the Muslims, had evolved an attractive pattern of co-operation, not unmixed, naturally, with occasional notes of discord. With all their famed skill, which until recently had made their diplomacy the most powerful in the world, the English rulers decided to put themselves between the Hindus and the Muslims and so create a communal triangle of which they would remain the base.\* It is instructive to note how the British Government gave effect to their policy of counterpoising one community by the other.

The effects of this policy first became manifest in the reorganization of the Indian Army effected after the Rebellion of 1857. Before that time Indians stood mixed up in the ranks of the regular forces. There was no division or separation by caste or clan. The Hindus and the Muslims, the Jats and the Sikhs, and the Poorbeas were mixed up so that each and all lost to some degree their racial or sectarian prejudice and developed a rare spirit of *camaraderie* or *esprit de corps*. It was the sentiment of unity thus created which made the rising of 1857 possible. The reorganization destroyed this sentiment of unity. Regiments, battalions, and companies came to

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\* Ashoka Mehta and Achut Patwardhan : *The Communal Triangle in India*, page 52.

be based on sectarian, caste and class distinctions. During the British regime we had the Sike regiments, the Dogra regiments, the Gurkha regiments, the Jat regiments and so on. This new basis developed class consciousness and stood in the way of the growth of national feeling.

Outside the army effect was given to the policy by encouraging the one and suppressing the other community. It was the Mohammedan community which the British Government were determined to suppress, for they felt that the Mutiny was largely instigated and engineered by members of that community. The Muslims were deliberately excluded from the Army and the Government services, while the Hindus were shown every preference. It has been computed that in 1871 out of a total of 2141 persons in the employment of the Bengal Government there were only 92 Muslims as against 711 Hindus and 1338 Europeans.\* Efforts were made to ruin the Muslims economically and educationally. The Permanent Settlement of Bengal seems to have been made with that end in view. It enriched the Hindus at the cost of the Mohammedans. But forces were at work which brought about a change in the attitude of the British Government towards the Muslims. Sir Syed Ahmad Khan tried his best to show that the suspicions of the Government were unfounded and endeavoured hard to bring about a *rapprochement* between his community and the Government. In this he was eminently successful. The political situation in the country was very much in his favour. There was a good deal of political awakening in the country. The Indian National Congress had come into existence and begun to criticise the policies of the Government. Muslim leaders like Allama Shibli Numani, Maulana Rashid Ahmad Gangohi and Maulvi Lutfullah of Aligarh advocated common cause with the Hindus. In a speech delivered at Gurdaspur in 1884, Sir Syed Ahmad Khan uttered the following words: 'We (meaning Hindus and Mohammedans) should try to become one heart and soul and act in union. If united, we can support each other; if not, the effect of one against the other would tend to the destruction and downfall of both.'† Speaking on another occasion he remarked that Hindus,

\* *Ibid*, page 85.

† Quoted by Gurmukh Nihal Singh, *Landmarks in Indian Constitutional and National Development*, pages 372-3.

Muslims, Christians and all others who lived in India belonged to one and the same nation, and asked his audience to remember that the words Hindus and Mohammedans were meant only to mark religious distinction and in no way implied that all Indians living in the country did not belong to the same nation.\* The growth of such a sentiment could never be welcome to the foreign government which, in order to maintain its stability, found it necessary to take steps to prevent the Muslims from joining the national movement. It reversed its attitude towards the Muslims, decided to patronise them and suppress the Hindus. In keeping the Muslims of Northern India away from the Indian National Congress Mr. Beck who had come over to Aligarh as the first English Principal of the newly started M. A. O. College, played a very important role. He had great influence over Sir Syed Ahmad, and made the great Muslim leader oppose in his old age the proposals he had advocated for the greater part of his life. Mr. Beck was a great empire-builder; he helped empire-building by successfully keeping the Muslims away from the national movement.

**The Muslim Demand for Separate Electorates and the Establishment of the League.**— Though the Muslims of Northern India did not join the Congress, they had as yet no separate organization of their own which could be used by the British Government as a counterpoise to the Congress. The manner in which communal electorates and the League came into existence throws a flood of light upon the working of the British policy of counterpoise and its method of setting one community against the other. To its study we now turn.

To allay the discontent roused in the country by the administration of Lord Curzon, Lord Morley, the then Secretary of State for India, suggested to the Government of India that the time was appropriate for introducing further reforms in the popular direction.† Steps were accordingly taken to implement the idea. This was in 1906. Mr. Archbold who had succeeded Mr. Morison as the Principal of the M. A. O. College, wrote a letter to Nawab Muhsin-ul-Mulk, successor to Sir Syed as leader of the Muslim community and President of the College, elaborating

\* *Vide* Wilfred C. Smith: *Modern Islam in India*, page 18.

† Some writers believe that the proposal for reforms came from Lord Minto.

the idea of sending a deputation to wait upon Lord Minto. He informed Nawab Sahēb that the Viceroy was agreeable to receive the Muslim deputation, and suggested that it should consist of representative Muslims from different parts of India. He also mentioned that the address should express sentiments of loyalty to the Crown, show grateful appreciation of the step the Government wanted to take by introducing further reforms, and *express the apprehension of the Muslim community that if the principle of election were introduced without conceding separate representation to the Muslims it would prove detrimental to their interests.* The idea of communal representation thus did not originate with the Muslims : it had its inspiration in other quarters. The late Mr. Ramsay Macdonald, an ex-Prime Minister of Great Britain, has recorded the opinion in his *Awakening of India* that the agency responsible for the demand of separate communal representation as well as for its introduction was British officialdom. The Deputation that waited upon Lord Minto was, in the language of the late Maulana Mohammad Ali, a 'command performance'. It was organised from Simla. It is not necessary to reproduce here the details of the address presented by the Deputation to the Viceroy and believed to have been drafted by Mr. Archbold himself. It is sufficient to say that it demanded the following things for the Muslims : separate electorates, weightage in the reformed legislature, greater representation in the services, help in founding a Moslem University, and protection of their interests in case an Indian was appointed to the Executive Council of the Governor-General. In his reply Lord Minto said that he found himself in entire accord with the general position of the deputationists and assured them that his administration would safeguard their political rights and interests. His words are worth quoting. He said : 'You point out that in many cases, electoral bodies as now constituted, cannot be expected to return a Muslim candidate, and if by any chance they did so, it would only be at the sacrifice of such candidate's views to those of a majority opposed to his community, whom he would in no way represent : and you justly claim that your representation should be estimated not on your numerical strength, but in respect to the political importance of the community and the services it has rendered to the Empire. I am entirely in accord with you.' It would thus appear that Lord Minto was the real author of this

vicious system of communal representation. It is important to remember that the demand for separate electorates was opposed by Lord Morley himself who proposed a scheme of joint electoral colleges for the election of all the candidates belonging to different classes and communities. It was also condemned by the *Statesman* of Calcutta which was a habitual supporter of the Government. Nationalist opinion in the country was vehemently against it on the ground that it would widen the gulf between the Hindus and the Muslims and retard the growth of the national spirit. But the Indian bureaucracy and its supporters in England proved too strong even for Lord Morley, who yielded and the principle was incorporated in the Morley-Minto Reforms Scheme. The observation of Ramsay Macdonald that the 'Mohammedan leaders are inspired by certain Anglo-Indian officials, and that these officials have pulled wires at Simla and in London and of malice aforethought sowed discord between the Hindu and the Mohammedan communities by showing the Muslims special favours', is true cent per cent. It would also interest the reader to learn that in his early days Mr. Jinnah, the author of Pakistan and the two-nation theory, was strongly opposed to separate electorates. He was the mover of a resolution condemning this vicious principle at the Allahabad session of the Congress held in 1910. The resolution was supported by Maulvi Mazhar-ul-Haq, a staunch nationalist leader of Behar.

**The Muslim League.**— The success of the Simla deputation encouraged those who took part in it to start a separate organisation of the Muslims. Invitations were issued for a conference to be held at Dacca in December 1906, and the All-India Muslim League was formed there. Its founders were a group of well-to-do and aristocratic Mohammedans. Their intention 'was to keep the Muslim intelligentsia and middle classes away from the dangerous politics into which the Indian National Congress was then embarking.'\* The constitution of the League defined its aims and objects thus :—

'(1) To promote among Indian Moslems feelings of loyalty towards the British Government and to remove any misconception that may arise, as to the intentions of the Government with regard to any of its measures; (2) to protect the political and other rights

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\* Humayun Kabir, *Muslim Politics*, page 2.

of the Indian Moslems and to place their needs and aspirations before the Government in temperate language; (3) so far as possible, without prejudice to the objects mentioned under (1) and (2), to promote friendly relations between Moslems and other communities of India.'

In its inception the League was thus a communal body which it remained throughout its entire chequered career. The Muslim League was intended, and it has always tried, to look after and promote the political rights and interests of one particular community and not those of the people of India in general. It was also born as a loyalist body. Its aim was to promote feelings of loyalty towards the British Government among the Indian Moslems and not to foster the sentiment of patriotism and nationalism among them. These features clearly reveal the influence of Mr. Archbold, the then Principal of the M. A. O. College, and a few British officials who were mainly interested in seeing that the Hindus and the Moslems did not develop any comradeship.

It should be remembered that as thus constituted the League did not command universal support even among the Muslim intelligentsia. Mr. Jinnah was opposed to its communal character. Nawab Syed Mohammad refused to have anything to do with it. Maulana Shibli Naumani trenchantly criticised its policy. Maulana Mohammad Ali started an English paper called the *Comrade* and an Urdu paper named *Hamdard* from Delhi which vigorously attacked its communalism and loyalism. Maulana Abul Kalam Azad started a paper of his own from Calcutta called *Al Hilal* which aimed at infusing into the people of India a new spirit and a new enthusiasm. Partly as a result of these forces and partly on account of the events which were then taking place in Turkey and other Moslem countries and the attitude of Great Britain to them, and above all, because of the termination of the baneful influence exercised by the British Principals of the M. A. O. College, Aligarh, over the political opinions and activities of the Muslims, a great change was visible in Muslim politics. Progressive leaders like Maulana Mohammed Ali, Maulana Mazhar-ul-Haq, Syed Wazir Hussain, M. A. Jinnah and Hassan Imam favoured a change in the constitution of the League on progressive and patriotic lines so as to bring it in line with the creed of the Congress. Accordingly its

constitution was amended in 1913. Promotion of friendship and union between the Mussalmans and the other communities of India and the attainment of self-government suited to Indian requirements under the aegis of the British Crown were included in the aims and objects of the League. This change paved the way for common action with the Congress. Mr. Jinnah took the next important step by inviting the next session of the League to Bombay where the Congress was to meet for its annual deliberations. Thenceforth for several years the two bodies held their sessions at the same place. This enabled the two bodies to collaborate and formulate a joint scheme of post-war reforms. The result was the famous Congress-League Scheme adopted by the Congress and the League at their respective sessions held in Lucknow in 1916. Another important consequence of the step taken by Mr. Jinnah was that Congress leaders like Mahatma Gandhi, Pandit Madan Mohan Malaviya and Mrs. Naidu attended the League sessions in 1915, 1916 and 1917, and spoke from its platform in support of several resolutions. The League took on a nationalist hue. The President of its Calcutta session, the Raja of Mahmudabad, in his presidential oration spoke as follows : 'The interests of the country are paramount. We need not tarry to argue whether we are Muslims first or Indians. The fact is we are both, and to us the question of precedence has no meaning. The League has inculcated among the Muslims a spirit of sacrifice for their country as for their religion.'

This change from loyalty to nationalism was remarkable. It enabled the League formally to associate itself with the launching of the great Non-Co-operation movement by the Congress in 1920 to redress the Punjab and Khilafat wrongs. But the struggle on behalf of the Indian Moslems was carried on by the Khilafat Committee which had come into existence and not by the League. It may also be pointed out that at that time the Muslim divines or Ulemas, who had till then held aloof from active participation in Muslim politics on the ground that it signified nothing more than flattery and expression of loyalty to the powers that be, also threw their weight into the struggle. They organised the famous Jamiat-ul-Ulema-i-Hind which has been nationalistic throughout its career and has 'consistently used its great influence to crystallise Muslim opinion against foreign rule.\* Maulana Mohammad-ul-Hassan who was

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\* Mehta and Patwardhan, *op. cit.*, page 37.

interned at Malta for anti-British activities during the War was its founder. After his death its leadership passed on to Mufti Kifayatullah. The Jamiat has consistently espoused the cause of Hindu-Muslim unity and supported the National Congress in its fight against British imperialism.

On account of the rise into prominence of the Khilafat Committee and the Jamiat and their great hold on the Muslim masses the League suffered an eclipse after 1920 and remained in a moribund condition for some time. Many of its members, however, secured government patronage and basked in the sunshine of official favour.

The Hindu-Muslim riots which broke out in the country after the withdrawal of the first Non-Co-operation movement by Mahatma Gandhi, the emergence of the Hindu Mahasabha with its twin programme of Shuddhi and Sangathan, and the reversion to the constitutional programme on the part of the Congress gave Mr. Jinnah an opportunity to revitalise the League. It should be remembered that Mr. Jinnah was a staunch Congressman at one stage, and that he left the Indian National Congress in 1920 when it renounced the method of political mendicancy and adopted the method of direct action. The League was revived, but Mr. Jinnah could not put life into its lifeless sessions. The appointment of the All-White Simon Commission was the occasion for a split in the League ranks. One section led by Mr. Jinnah was for boycotting it ; the other led by Sir Mohammad Shafee was in favour of co-operating with it. The two Leagues held their sessions at Calcutta and Lahore. The Jinnah section co-operated with the Congress and other political parties in the effort to produce an agreed constitution which was embodied in the famous Nehru Report. At the suggestion of the Shafee League a Muslim All Parties Conference was organised to consider the solution of the communal problem as suggested in the Nehru Report, which had recommended joint electorates with reservation of seats for the minorities. In spite of the backing given by the Nationalist Muslims the Conference rejected the idea of joint electorates. This led to a schism in the Muslim ranks. The Nationalist Muslims formed themselves into a separate party. Hakim Ajmal Khan, Dr. M. A. Ansari, Sir Ali Imam, Sir Wazir Hassan, Dr. Syed Mahmud, Mr. Asaf Ali, Dr. Mohammad Alam, Dr. Saiffuddin Kichlew and

Maulana Abul Kalam Azad were among the prominent Nationalist Muslims.

The result of the developments sketched above was that there were two distinct groups of Muslim politicians giving lead to the Muslim community in two different directions. On the one hand, there was a group of well-to-do persons who, as usual, looked to the British Government for favours and jobs. The Government was not ungenerous in extending patronage to the members of this group who held positions of vantage in the administration of the country from where they could do some good to their friends and relations. Sir Fazli Hussain and Sir Muhammad Shafee were the leaders of this party. They controlled the Muslim League. The other group consisted of Nationalist Muslims who were members of the Indian National Congress. It was led by Hakim Ajmal Khan, Dr. Ansari and Maulana Abul Kalam Azad. As this group had no power and patronage, its influence on the Muslim middle class was weaker than that of the first, though it contained men of sterling character and talent. Mention should also be made of a third element. It consisted of the powerful Ahrar party in the Punjab and the Krishak Proja party in Bengal. The members of this bloc generally sympathised with the political aspirations of the Congress, but considered its economic policies and programme as halting and inadequate. They naturally could not co-operate with the League.

At this stage Mr. Jinnah found himself ploughing a lonely furrow. 'He could not fit in with the Moslem moderates, for politically he was too much influenced by Congress ideology. Nor could he merge with the Progressives among Muslims, for with his orthodox and conservative economic views, they seemed to him rank revolutionaries.\* He could not rejoin the Congress which he had left long ago and which was pledged to direct action. It is not surprising that he decided to retire from Indian politics, and to proceed to England to practise law there. But Providence came to his help. During the space of a few years death removed from the scene of action notable Muslim politicians of all-India status. The passing away of men like Hakim Ajmal Khan, Maulana Mohammad Ali, Dr. Ansari, Sir Fazli Hussain, Sir Mohammad Shafee left the field

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\* Humayun Kabir : *op. ct.*, page 8.

free for Mr. Jinnah. He returned from England and assumed leadership of the League which he tried hard to put on a strong basis. The general elections of 1937 gave him an opportunity. Under his presidentship the League contested the elections to the various provincial legislative bodies but achieved moderate success only. In Muslim majority provinces like the Punjab, the North-West Frontier Province, Bengal and Sind the League was trounced by rival Muslim parties. In the N. W. F. Province the Congress defeated it: in Sind the Azad Muslim party led by Mr. Allah Bux came out victorious. In the Punjab the Unionist party under the leadership of Sir Sikandar Hayat Khan routed it, and in Bengal the Krishak Proja party was returned as the single largest party among the Muslims. It was only in the Muslim minority provinces like the United Provinces and Bihar that the League candidates were generally successful against non-League Muslim rivals. The Congress helped the former as against the latter. It is computed that in all the provinces the League could win even less than 25 % of the seats allotted to the Muslims. Out of 485 (according to some 487) Muslim seats, the League captured only 110. This shows that the League did not represent the general Muslim mind. Its fortunes were at a low ebb.

But as a result of the Congress refusal to accept office in the Provinces where it had a majority in the legislature and the breakdown of the Congress-League negotiations to form coalition ministries there developed a situation in which the League retrieved its lost position and achieved something which it never had before. It won the real confidence of the Muslims. In Bengal the Proja party and the League combined under the leadership of Mr. Fazlul Haq who perhaps did 'more than anybody else in India to restore the prestige of the League and win for it support among the masses of the land.\* In the Punjab Sir Sikandar Hayat Khan joined the League and thus added to its power. As we have pointed out on page 361 above, as a result of the refusal of the Congress to help the Government in war effort and the resignation of the Congress ministries the Government of India began to lean more and more heavily on the League. This added greatly to the League's prestige and influence which rose very high in 1942. The

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\* Humayun Kabir: *op. cit.*, page 8.

developments in the Punjab after the passing away of Sir Sikandar Hayat Khan and the defection of Mr. Fazlul Haq in Bengal at an earlier date left the League weaker than it was two or three years ago.

But this decline was temporary; it gained fresh strength when the Congress was in the wilderness after 1942. The League succeeded in forming ministries in five provinces, of course, with the help of the British Governors. In the Punjab Col. Khizar Hayat Khan, who succeeded Sir Sikandar Hayat Khan as the Premier, joined the Muslim League along with his Muslim followers. In Bengal, the Governor succeeded in getting rid of Mr. Fazlul Haq and installing Khwaja Sir Nazimuddin, a Muslim Leaguer, in his place as Premier. A League Ministry under Sir Saadulla Khan came into existence in Assam, and another in the N. W. F. P. under Mr. Aurangzeb Khan. Sind also got a League ministry after the dismissal of Mr. Allah Bux by the Governor. These ministries were not so homogeneous and cent per cent League as were the Congress ministries before their resignation in 1939. Nevertheless, they gave to the League a status and a prestige which it had never enjoyed before. Mr. Jinnah also acquired a new and unprecedented individual authority: he became the Qaid-e-azam. The elections to the central and provincial legislatures held in 1946 demonstrated beyond doubt that the League had the support and backing of a very large section of the Muslim masses. This lent much support to its claim to be regarded as the sole representative of the Indian Muslims.

**The League and the Congress.**— The relations between the two premier political organisations in the country fluctuated with time. It will be recalled that the League was called into existence as a counterpoise to the Congress and with the object of keeping the Muslim intelligentsia away from its influence. This state did not endure for long. There was a change in the constitution of the League in 1913 which brought it into line with the Congress and led to cooperation between the two. But after the withdrawal of the first Non-Co-operation movement and the extinction of the Khilafat Committee, the two bodies drifted apart. There was, however, no hostility between them as yet. The Congress reverted to constitutionalism and there was little life in the League. With the schism between the Shafee and the Jinnah sections and the defection of the Nationalist Muslims the League fell into the hands of the moderates

and reactionaries, and it relapsed into its pre-1910 state. When the Indian constitutional question was being discussed in England and the reforms of 1935 were in the making, the League became active under the leadership of Mr. Jinnah and showed eagerness to collaborate with the Congress. In 1934 it passed a resolution expressing its readiness to co-operate with other communities to secure such future constitution for India as would be acceptable to the country. In 1935 it condemned the Federal scheme as outlined in the Government of India Act of 1935 on the ground that it would thwart and delay indefinitely India's advance to self-government. In 1936 its President, Sir Wazir Hassan, made an impassioned plea for unity among all the communities of India. Mr. Jinnah himself was looking forward to the League co-operating with the Congress; he saw no substantial difference between the programmes of the two bodies. It may be mentioned here that in the elections to the provincial legislatures held in 1937 Congress workers helped League candidates as against non-League Muslim candidates wherever they could. But the whole picture underwent a sudden and tragic change since July 1937 onwards. In place of co-operation there developed estrangement between the two organisations; the gulf between them widened with each passing year. The story of the way in which the two drifted in opposite directions is interesting and deserves to be told.

On the eve of the elections of 1937 a leading Muslim politician of U. P. who had thitherto belonged to the Congress deserted it as he thought it would be defeated in the elections and went over to the Muslim League with his following. He was mistaken; the Congress was victorious and formed the ministry. This gentleman asked to be taken back to the fold and also to be rewarded with a cabinet post. 'Very naturally, but perhaps unwisely, the Congress refused: as any British party in a like case would have done. The consequences were unfortunate, and to the English mind astounding. The Muslim League redoubled its attacks on the Congress, and on the strength of this and similar cases, accused it of being a totalitarian party which sought to monopolise power.\*

The case of the U. P. Muslim politician was symptomatic of a general problem. In a previous chapter we have shown that after

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\* Brailsford : *Subject India*, page 83.

the 1937 elections had been fought and won by the Congress, the problem arose as to how it was to use the majorities it had obtained. It refused to accept office unless the Governors agreed to give certain assurances. Later on when it decided to shoulder the responsibility of administering the affairs of the provinces, the League expected an invitation from the Congress to form coalition cabinets. The Congress, however, came to the conclusion after much anxious deliberation that it should not form coalition cabinets with non-Congress elements. The reasons for this decision have been stated on page 353 above. But as it wanted to make the cabinets as broad-based as possible, consistently with its principles and policies, it asked the Muslim League members to sign the Congress pledge, become its members and share the responsibilities of office with it. It extended this invitation on the ground that the liberation of the country and the amelioration of the masses were not affected by religion, and therefore there could be no justifiable reason for such Muslims as accepted these two broad principles remaining outside the Congress fold. Mr. Jinnah himself saw no substantial difference between the League and the Congress. Furthermore, Congress also decided to establish contact with the Muslim masses and to appeal to them to strengthen its hands by becoming its members in large numbers, on the ground that it was a non-communal organisation and championed the cause of the poor and aimed at agrarian reform. The Muslim League interpreted these moves as directed against its very existence ; and instead of accepting the hand of co-operation extended to it, it began to make venomous attacks upon its leadership and accuse it of pursuing exclusively Hindu policies. The Congress High Command was charged with being fascist and totalitarian, and the Congress itself was dubbed as a Hindu body out to crush all minority communities, specially the Muslim. It became the fashion to say that Muslims could expect neither justice nor fair-play under Congress Government. Violent language was used in describing what came to be called 'atrocities' perpetrated on innocent Muslims in Congress governed provinces. The League appointed a committee under the Raja of Pirpur to enquire into the 'numerous complaints of oppression and ill-treatment meted out to the Muslims.' The result was the Pirpur Report. There was another document of the same type known as the Shaffee Report which gave a long list of the disabilities from which the Muslims suffered. One person went

to the length of saying that the Muslims could think of no tyranny as greater than the tyranny of the majority. The Congress President offered to investigate into any concrete instances of the alleged 'atrocities', but the League never accepted the offer. It is not relevant to our 'purpose to go into the validity of these charges'; only this much may be pointed out that no provincial Governor had anything to say against the way in which the Muslims and other minorities were treated by the Congress ministries. Had there been any truth in the charges brought by the League, the British Governors would not have kept quiet, but would have exposed the Congress. On the contrary, the Governor of U. P. recorded his opinion after retirement in 1939 'that in dealing with communal issues the ministers had normally acted with impartiality and a desire to do what was fair'. Moreover, had there been any truth in these allegations, the Muslim members of the Congress Cabinets would have protested. Prof. Coupland also says that the Congress ministries did not lend themselves to a policy of communal injustice, still less of deliberate persecution. It is also interesting to note that the League which sought to proclaim to the world at large the so-called 'atrocities' alleged to have been committed by the Congress during its 28 months' regime had not a word to say about the systematic manner in which the Muslims were harrassed and persecuted for several decades by the British Government until this policy was reversed in the eighties of the last century. Nor did it raise its voice against the brutal excesses committed by the British authorities on Indians in general and the Muslims of the N. W. F. P. in particular during the several campaigns of civil disobedience launched by the Congress.

The reactions of the Muslim League to the refusal of the Congress to share power with it went much beyond the frenzied outbursts; it decided to observe a 'Day of Deliverance and Thanksgiving' when the Congress Ministries resigned in 1939 on the war issue. League politicians began to condemn the Act of 1935 on the ground that it had completely failed to protect the Muslim interests. They began to dread the prospect of responsible government at the Centre, since it would transfer power to a permanent Hindu majority over Muslim majority provinces, and made up their mind to prevent it at all costs. Mr. Jinnah began to repudiate the very principle of parliamentary government on which the Act of 1935

was based. He said that majority rule presupposed a homogeneous community which did not exist in India. This was the beginning of the two-nation theory which developed later and ultimately led to the division of the country. If only a few Muslim Leaguers had been taken into provincial cabinets in 1937, perhaps the later history of India would have been somewhat different. It is, however, highly problematic whether there could have been genuine cooperation between the League and the Congress. The reasons which led the Congress to abandon the idea of coalition ministries were sound. This again shows that the communal problem was mainly political ; it was given a religious garb by interested persons.

**The League and the Government.**— Besides the Muslims there were other minorities also in India ; e. g., the Untouchables, the Sikhs, the Indian Christians, the Parsis. The Parsis were numerically the smallest, but they never demanded any special privileges or safeguards for themselves ; their contribution to national awakening and public life has been immense. The Indian Christians also never placed any obstacles in the constitutional advance of the country. The Sikhs were a strong minority in the Punjab, and their demand for the same privileged treatment as was shown to the Muslims, just though it was, complicated the communal problem in the province and made it almost insoluble. Under the leadership of Dr. Ambedkar the Untouchables also demanded separate electorates. But no other minority proved so intransigent and adopted such a negative attitude towards constitutional advance after 1939 as the Muslims under the banner of the Muslim League. The League ultimately succeeded in securing its objective in the shape of Pakistan, mainly because of the help and encouragement given by the third arm of the communal triangle in India, namely, British Imperialism. The point deserves some consideration.

In this connection the attention of the reader may be drawn to what was said on a previous page about the origin of the League as a body of loyalist Muslims designed to function as a counterpoise to the Indian National Congress. There was a change in its creed in 1913 and a *rapprochement* with the Congress resulting in the Lucknow Pact in 1916. The Government's reaction to it is highly significant. It rejected the administrative and constitutional reforms proposed in it, in spite of the fact that they were supported by all

the parties in the country, but accepted the solution of the communal problem and made it the basis of the Reforms of 1919. The Government, however, criticised the apportionment of the seats between the Hindus and the Muslims in Bengal and suggested that the Muslims should have got 44 seats instead of the 34 allotted to them under the pact. This implied that the Muslims could always hope to get more liberal terms from the Government than from the Congress so far as representation in the legislatures, etc., was concerned. This was to sabotage the Lucknow pact. The Muslims soon began to agitate for a large number of seats in the Punjab and Bengal while sticking to the weightage they got in other provinces. Instead of adhering to the Lucknow pact until it was replaced by a mutually agreed scheme, the Government encouraged the Muslims in their demands. The result was the notorious award of Ramsay Macdonald.

The *rapprochement* between the Congress and the League begun in 1916 continued for a number of years. While it existed the Government shelved the question of political reforms and concentrated attention on the economic problems. They also tried to win over the Muslims to their side by giving the Punjabi Muslims and the Pathans a greatly increased share in the appointments in the Indian Army. This tendency to placate the Muslims and give them a preferential treatment reached its high watermark during the Round Table Conference. Muslims were encouraged in their demand that they would not participate in the proceedings of the Federal Structure Sub-Committee unless the communal question was solved to their satisfaction. An examination of the terms of the Communal Award would show that the Government accepted all the demands of the Muslims. Such a course was dictated by their policy of checkmating nationalism by fostering communalism; they estimated the importance of a community by its opposition to nationalism and its strategic importance to themselves. It is also worth noting that whenever the Government of India had to choose Muslims for any purpose, they always selected loyalist Muslims and completely ignored the nationalists. Attempts made by Gandhiji to secure the nomination of Dr. Ansari to the R. T. C. did not bear any fruit. The Muslim League thrived because of the patronage of the British Government.

The great and unexpected success of the Congress in the general elections of 1937 filled the Government with alarm and set them devising means to check its growing powers and meet the challenge it involved. Nothing could be more natural for them than to use the Muslim League as counterpoise to the Congress. The way in which Sir Sikandar Hayat Khan, Premier of the Punjab, surrendered to the Muslim League after having trounced it in the elections of 1937 can be explained only on the hypothesis that the Government changed their attitude towards Mr. Jinnah and wanted to make him their ally. The attitude adopted by Mr. Jinnah towards the release of Mahatma Gandhi and members of the Working Committee and the ending of the deadlock confirms this hypothesis. The indecent manner in which Mr. Fazlul Haq was huddled out of office in Bengal by the Governor to make room for a League ministry and the dismissal of Mr. Allah Bux from office in Sind with a similar end in view point in the direction of a secret alliance between the League and the Government. Lord Linlithgow could easily place a veto in the hands of the Muslim League over all constitutional advance in the country ; and at a later date, Lord Wavell made full use of the intransigence of Mr. Jinnah in seeing that the Simla Conference ended in failure. It is thus clear that the Government backed the Muslim League in all the ways it could ; and in return the League co-operated with the Government on all crucial occasions. But for this support and backing of the Government the League could not have afforded to reject the hand of co-operation extended by the Congress and insist upon the acceptance of absurd demands as a condition precedent to any understanding with the Congress.

**The Demand for Pakistan.**— The year 1937 was a turning point in the history of the Muslim League. It not only saw the beginning of a definite rupture between it and the Congress, but also witnessed the foundations of a new demand and a new theory being laid. The new demand was the demand for Pakistan ; and the new theory was the theory that Muslims formed a nation separate and distinct from the Hindus. Pakistan and the two-nation theory on which it was based germinated and developed between 1937 and 1940.

The idea of Pakistan as a separate national state of Indian Muslims is usually ascribed to the great poet, Mohammad Iqbal. At

the Allahabad session of the Muslim League held in 1930 Dr. Iqbal spoke as follows: 'I have no hesitation in declaring that if the principle that the Indian Muslim is entitled to full and free development on the lines of his own culture and tradition in his own Indian homeland is recognised as the basis of a permanent communal settlement..... I would like to see the Punjab, North-West Frontier Province, Sind and Baluchistan amalgamated into a single state..... The formation of a consolidated West Indian Muslim State appears to me to be the final destiny of the Muslim at least of North-West India.' But he also realised the danger inherent in the idea. Edward Thompson writes in his book '*Enlist India for Freedom*' that Dr. Iqbal declared in the course of an interview that the Pakistan plan spelled disaster to the British, the Hindus and the Muslims alike. It is not easy to explain why he advocated it from the presidential chair, if he felt convinced of its injurious character. The idea of Pakistan was taken up and propagated by a group of young Muslims in England under the leadership of Chaudhri Rahmat Ali during the Round Table Conference. It is believed in many quarters that the scheme was financed by some British agency which was interested in the partition of India. It was brushed aside as 'chimerical and impracticable' by the Muslim spokesmen at the Round Table Conference, and nothing was heard about it for some years.

The idea began to develop and take shape in the minds of the Muslim League politicians after their disappointment in 1937. They saw that separate electorates, statutory safeguards and even separate provinces had proved useless; they began to realise that these artifices would not protect them from the rule of the Hindu majority in the Centre in an All-India Federation. They therefore began to assert that the Muslims were a separate nation and not merely a minority community. As a minority community they could never hope to obtain an equal status with the Hindus; as a nation, however, they thought they were entitled to a separate homeland where they could develop their spiritual, cultural, economic, social and political life to the fullest in accordance with their own ideals and according to the genius of the people, and enjoy the right of self-determination. The areas in the north-west and north-east of India where they were in a majority constituted their homeland, and they should be consolidated into one or two coherent Muslim states, to be

known as Pakistan. In the beginning, however, the Muslim League did not contemplate the division of the country into two sovereign and independent states; it thought only in terms of autonomy for the Muslim state or states in a loose sort of Indian federation. In an article contributed to the *Time and Tide* in 1940 Mr. Jinnah wrote about the 'two nations in India who both must share the governance of their common motherland.' The use of the words 'share' and 'common motherland' clearly shows that Mr. Jinnah did not think of division of the country at that time. But a few months later the League adopted a resolution in its Lahore session demanding that the areas on the north-west and the north-east where the Muslims were in a majority should be constituted into an independent state. The formulation of the demand for an independent and sovereign Pakistan may therefore be said to date from the Lahore session held in 1940, which authorised the Working Committee of the League to prepare a plan by which the new State could assume full control over matters like defence, external affairs, communications, and customs.

The Indian National Congress was naturally opposed to the idea of Pakistan; throughout its long history it had laboured and suffered for the freedom of the country as a whole. Muslims outside the League were equally opposed to it. Khan Bahadur Allah Bux condemned the scheme and the two-nation theory on which it was based in strong language. The Jamiat-ul-Ulema-i-Hind, a body of Muslim divines, the Majlis-e-Ahrar, the All-India Momin Conference, the Khudai Khidmatgars of N. W. F. P., the All-India Shia Conference and the Nationalist Muslims all denounced it. The Sikhs in the Punjab declared their determination to oppose it tooth and nail. The Cabinet Mission examined the scheme and declared it to be an impracticable proposition. It could not be regarded as an adequate solution of the communal problem either; in the absence of a wholesale transfer of Hindus from Pakistan to India and of Muslims from India to Pakistan, communal minorities would have remained in both the states; the conflict between them could not have become less intense in any way merely because of partition; nay it could have become, as it actually became, more bitter. The two-nation theory on which the whole idea of Pakistan was based was as absurd, unsound and fantastic as anything could be. Most of the Indian Muslims are the descendants of Hindu converts to

Islam. If in the course of a few generations such persons could become a nation altogether distinct from their Hindu compatriots in spite of having lived, enjoyed and suffered together for centuries on end, the whole science of sociology shall have to be re-written. There is no historic parallel to the claim of the League that the Indian Muslims constitute a nation separate and distinct from the Hindus. It is futile to base nationality on a religious basis. It is not necessary to labour this point further.

Nevertheless, in spite of the theoretic unsoundness and absurdity of the two-nation theory, in spite of the united and determined opposition of the Congress, the non-League sections of the Muslims in the country and the Sikhs, and in spite of the geographical, economic, cultural and historical unity of India which made any attempt to divide her into two separate and independent states an exceedingly difficult and unnatural task, Pakistan did become a reality and India had to be cut into twain involving millions of persons on both sides in unspeakable misery. The reasons which compelled the Congress to accept partition as an unavoidable evil have been set forth elsewhere ; they need not be repeated here. Only this much may be stressed that it could not have taken place without direct and indirect abetment and encouragement on the part of British imperial interests. The whole trend of British policy in India led towards it ; British politicians like Sir Stafford Cripps, Mr. Leopold Amery, Lord Linlithgow, and Mr. Churchill played a vital part in the disruption of India. It is not in this country alone that the British statesmen encouraged and worked for the division of a state, they were responsible for the creation of Ulster in Ireland, and of the Jewish state of Israel in Palestine against the opposition of the Arabs. But all this is past history now ; the best one can do in regard to it is to accept Pakistan as a part of Divine plan and cease to fume and fret over it. It has not been an unmixed evil either ; the establishment of Pakistan may be regarded as the amputation of a diseased limb of our body politic which has left it healthier and stronger than before.

**Other Communal Organisations.**— Though the Muslim League was the first communal body organised with the object of safeguarding the political rights of a particular religious community, it was not the only one of its kind in India. The Hindus, the Sikhs, the

Christians, and the Untouchables set up communal organisations of their own in course of time for similar purposes. India became a land of communal organisations. The differences between them were utilised by the British Government for its own purpose. A few words may be added about some of them.

**The Hindu Mahasabha.**— It is the chief communal organisation of the Hindus. It was set up in 1923 with the object of uniting the Hindus of India on a common platform for the protection and promotion of their interests and culture. Several factors contributed to its formation. In the first place, it was realised that the proselytising activities of the Muslims and Christians were having a highly adverse effect on the political power of the Hindus ; some steps had to be taken to counteract them. In the second place, the Hindus generally came out as the second best in the communal riots which broke out with greater frequency after the suspension of the non-violent non-cooperation movement in 1922. They suffered more losses in property and human lives than the other communities. It became necessary to organise the Hindus for self-defence. Shuddhi and Sangathan thus became the watchwords of the Mahasabha in the early years of its life. Thirdly, the Muslim League was putting forth more and more aggressive demands and they were receiving the support of the British authorities. The Indian Congress could not take up a strong attitude against such demands. The Hindus were thus driven to organise themselves. This is the reason why nationalists like Madan Mohan Malaviya and Lajpat Rai supported the Mahasabha. The strong and uncompromising attitude adopted by the Mahasabha towards the notorious Communal Award as compared to the neutral attitude of the Congress illustrates this aspect of the Mahasabha activities. In short, the Mahasabha thrived mainly because of the unreasonable demands of the Muslim League and the policy of appeasement or compromise adopted by the Congress towards them. It did not achieve any success in its objective however, because it never obtained the same backing of the Hindu masses as the League did of the Muslims. It had a great and powerful rival in the National Congress whose policies and programme made greater appeal to the masses. The British Government also never patronised it. It therefore never acquired any political importance.

The advent of Mr. V. D. Savarkar wrought a great change in the character of the Mahasabha ; it developed a political programme and began to give a lead to the Hindus on political questions. He came at a time when the Hindus were beginning to feel dimly that the Congress wanted to placate the League and thereby might put the rights of the Hindus in jeopardy. Shri Savarkar used all his talents to impress upon the Hindus the dangerous consequences of this policy on their future. He preached the doctrine of Hindu ascendancy and asserted that the politics of India must be Hindu politics, and must be fashioned and tested in Hindu terms. He told the Muslims that they must be content with the status of a minority community in a democratic state which orders its life on the principle of majority rule. It would thus appear that the Mahasabha became as aggressively communal as the Muslim League, but 'tried to cover up its extreme narrowness of outlook by using some kind of vague national terminology.\* After the retirement of Shri Savarkar, Dr. S. P. Mookerjee became its leader and gave it a more *nationalist* outlook.

The Mahasabha is opposed to the Congress ideal of India being a secular state, and stands for a Hindu Rashtra. Its aim is the 'maintenance, protection and promotion of the Hindu race, Hindu culture and Hindu civilization, and the advancement of the glory of the Hindu Rashtra.' As against the League demand for Pakistan it set up the slogan of Akhand Hindustan. Its members still swear by the ideal of Akhand Hindustan. As a protest against the Congress acceptance of the scheme of partitioning the country the Hindu Mahasabha refused to participate in the Independence Day celebrations on August 15, 1947. It started direct action against the policy of the Congress government in U. P., which, however, turned out to be a dismal failure. The Government of India put a ban on this organisation as it was suspected of having a hand in the assassination of Mahatma Gandhi.

In so far as it wants to make India a Hindu Rashtra and rejects the ideal of secular state, it is definitely a reactionary movement out of tune with the spirit of the times. Though it talks of Hindu culture and civilization, its policies are incompatible with what is noblest and highest in Hindu culture, namely, tolerance and forbearance.

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\* Jawaharlal Nehru : *Discovery of India*, page 329.

**Rashtriya Swayam Sevak Sangh.**— A few words may be added about another Hindu communal organisation, allied to the Hindu Mahasabha but having no official connection with it. This is known as the Rashtriya Swayam Sevak Sangh. It claims to be a purely cultural movement, aiming at the revitalisation of the Hindu race and making it strong. It enrolls members at a comparatively early age and seeks to inculcate in them a definite ideology and outlook. Like the Mahasabha, it believes in Akhand Hindustan and stands for the establishment of a Hindu Rashtra in India. It thus rejects the conception of a secular state. Like the Mahasabha again, it was suspected of complicity in the conspiracy to kill Gandhiji and the Government banned it. Its chief was arrested. The ban was removed after some time but restrictions were imposed upon some of its activities which had for their aim the establishment of a semi-military organisation.

The Sangh has done good work in inculcating the spirit of cohesion, social service, and discipline among its members; but it has produced a narrow and communal outlook in them. From this point of view, it is a retrograde movement. What the motherland needs is citizens with a broad vision and generous minds. Little minds and big states are incompatible.

Minority communities like the Sikhs, Indian Christians, Anglo-Indians, Europeans and the Depressed Classes had their respective organisations. Each of them was anxious to get as large a share in political power under the reformed constitution as possible. The Sikhs demanded weightage in the Punjab and in the Centre similar to what was conceded to the Muslims under the Lucknow pact. The Indian Christians and Anglo-Indians and Europeans made similar demands. The Depressed Classes under the leadership of Dr. Ambedkar wanted separate electorates. Their demands could not always be harmonised. The Muslim demand for a majority in the Punjab and Bengal could not be reconciled with the Sikh demand for weightage in the Punjab, and with the European and Anglo-Indian demand for special representation in Bengal and justice to the Hindus. Thus arose the communal problem which proved a stumbling block during the second session of the R. T. C. and made all progress in the work of the Federal Structure Committee impossible. Mahatma Gandhi tried his best to solve it but failed. In

the end the British Prime Minister was asked to give his award. The distribution of seats between the various communities and interests in the central and provincial legislatures for purposes of the Act of 1935 was determined by this Award as modified by the Poona Pact between the Caste Hindus and the Depressed Classes. It was published on the 15th of August, 1932.

**The Communal Award.**— It confined itself to the two basic questions of the method of election and the strength of the various communities in the legislature. In view of the great harm that was being done by separate electorates nationalist opinion in India was strongly in favour of joint electorates with reservation of seats for the minority communities together with the right to contest additional seats. But as the Muslim delegates were not prepared to give up separate electorates, the Award retained the principle of communal representation through separate electorates and extended its application to communities which formed part of the non-Muslim constituencies according to the rules framed under the Act of 1919. The worst feature of the Award which led Mahatmaji to resort to his historic fast in the Yervada jail was the creation of separate electorates for the Depressed Classes. They had to be given up at a later stage because of the agreement arrived at between the Caste Hindus and the Depressed Classes embodied in the famous Poona Pact.

The Award fixed the number of seats for Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans, labour, commerce and industry, landholders, universities and women in the provincial legislatures and laid down special arrangements for election. Seats were also reserved for the Marathas in Bombay as well as for the representatives of backward areas. The number of seats allotted to each community or interest in the different provinces has been shown in the table on page 330 above. Here we would make some general observations concerning it.

Though Mr. Ramsay Macdonald claimed that the scheme of representation as contained in the Award was 'a fair and honest attempt to hold the balance between conflicting claims', it can be easily shown that certain communities were most favourably treated and others penalized by it. The scheme was most generous to the Europeans and Anglo-Indians and conceded to the Muslims most of

their demands. It is most unfair to the Hindus.

The gross injustice done to the Hindus of Bengal and the excessive partiality shown to the Europeans and Anglo-Indians in that province would be evident from the fact that the Hindus who constituted 44.8 % of the total population were given 32 % of seats in the provincial Legislative Assembly, whereas the Europeans who formed less than one-tenth of one per cent of the population i. e. '01 % were given 25 % of the seats (inclusive of European Commerce). The Anglo-Indians who constituted about one per thousand of the population got 1.6 % of the seats. In other words, whereas the Hindus got less than what they were entitled to on population basis, the Europeans got 25,000 %, and the Anglo-Indians 3,000 % weightage.\* If this distribution of seats between the various communities could be regarded as just and fair, one wonders what an unfair and unjust distribution would have been. In the Punjab also the Hindus who were in a minority were given less than what they were entitled to on population basis. The Sikhs who constituted about 13 % of the total population in the Punjab were given 18.3 % of the seats. But similar Muslim minorities in other Provinces were given far greater representation; for example, in the United Provinces where they formed less than 15 % of the population the Muslims were assigned 30 % of the seats. Similar was the case in Bombay, C. P., Madras, Bihar, and Assam. It is thus clear that as contrasted with the Muslims, the Sikhs were treated with small consideration. An analysis of the seats allotted to the various communities by the Award would show 'that the position of a community is estimated according to its opposition to nationalism and its strategic importance to the rulers.'†

It is worth remembering that separate communal electorates were originally designed to afford protection to the minorities. What the Award did was to give separate representation to the *majorities* in the Punjab, Sind, the N. W. F. P., and Bengal. The minorities in these provinces never demanded separate electorates for themselves, but these were foisted upon them against their will. The Award threw overboard the Lucknow Pact between the Congress and the League but retained the weightage it granted to the

\* *The Communal Triangle*, page 74.

† *Ibid.* page 75.

Muslims—a procedure most unfair and unreasonable. Either the Lucknow Pact should have been adhered to in its entirety, or it should have been abrogated completely. There was no sense in rejecting one part of it and retaining another.

From the preceding analysis it would be clear that the communal problem had no reference to religious issues. It referred to percentages and seats and government jobs. Furthermore, it did not concern itself with the masses; it was confined only to the sections of the classes belonging to different faiths. An examination of the demands of the various communal bodies shows that they had nothing to do with the problem of the masses which was alike for the Hindu, Muslim, Sikh and Christian masses. This conclusion finds support in the following words occurring in the election manifesto of the Congress :

'It is necessary to bear in mind that the whole communal problem, in spite of its importance, has nothing to do with the major problems of India, poverty and widespread unemployment. It is not a religious problem, and it affects only a handful of people at the top. The peasantry, the workers, the traders and merchants, and the lower middle class of all communities are in no way touched by it, and their burdens remain.'

The communal problem was the result of the British policy arising out of Indian conditions. It could not be solved so long as British imperial interests dominated our politics. The only method to solve it was to abandon the principle of communal representation. But the vicious principle was stuck to, and British strategy saw to it that the communal problem continued to sidetrack the struggle for independence.

The British Government said that the Award was provisional in the sense that they were prepared to accept any better scheme to which all the parties concerned might give their full assent. Such agreement was to be reached before the Reform Bill became Law.

**Unity Conference.**— The general dis-satisfaction aroused by the Award and the success with which the problem of the Depressed Classes was settled as a result of the Poona Pact led leaders like Maulana Abul Kalam Azad, Dr. Syed Mahmud, Pt. Madan Mohan Malaviya and Maulana Shaukat Ali to make fresh efforts to bring about an agreement between the various communities which would

not only replace the Award but also lead to a permanent and honourable solution of the communal question. Maulana Shaukat Ali appealed to the Government to release Mahatma Gandhi to help them in this task or at least to allow the leaders to meet him in the jail and discuss the matter with him. The Government, however, turned down the Maulana's request, and the inter-communal negotiations were carried on without the help and guidance of Mahatmaji. A Unity Conference consisting of representatives of the Hindus, Sikhs, Muslims, and Christians was held at Allahabad early in November, 1932. It appointed a committee to consider proposals for bringing about an agreement between the various communities. Messrs. Ramanand Chatterji, Abul Kalam Azad, Shaukat Ali, C. Rajagopalachari and Pandit Malaviya were among its members. It met from November 3 to November 17, and arrived at certain tentative conclusions. These were placed before the various organizations by their representatives who took part in its proceedings and were considered by them. The opinions of the different organizations on these proposals and the amendments recommended by them were considered by the Unity Conference at its third session which was held at Allahabad from December 23, 1932. The Conference reached complete agreement in respect of all important matters. The text of the agreement is very long and covers many items other than the number of seats allotted to the various communities in the central and provincial legislatures, and the method of election ; e. g., fundamental rights of the citizens, protection of religious and cultural rights and personal laws of the minorities, composition of the cabinets. It represented an unprecedented measure of success in solving the communal problem by mutual agreement.

Having achieved unanimity on almost all the controversial points the sub-committee of the Unity Conference was to proceed to Calcutta to tackle the problem of the representation of the European community in the Bengal Legislature, which had been awarded 25 % seats though it formed only '01 % of the total population. It could not possibly be allowed that excessive weight-age. At this crucial moment the British Government unexpectedly intervened, and the Secretary of State announced at the third session of the R. T. C. that they had decided to give the Muslims 33½ % of

British Indian seats in the Central Legislative Assembly in place of the 32 % which the Muslims had voluntarily accepted in the Unity Conference. They also announced their intention to separate Sind from Bombay and make it into a new Governor's Province with adequate financial aid from the Central Government. Nothing was said about safeguards for the Hindu minority in the new province. The Unity Conference had also agreed to constitute Sind into a separate province but without any aid or subvention from the Central Government and with adequate safeguards for the Hindus. These announcements made the work of the Unity Conference useless. Thanks to the adroit move on the part of the British Government, the labour of the Conference was wasted and the communal problem remained where the notorious Award left it.

**The Abolition of Communal Representation.**— With the withdrawal of British authority from India the problem of communal representation and separate electorates also disappeared. First introduced for the Muslims in 1909, separate electorates were later on extended by every successive Reform Act to other communities and interests as they fitted admirably into the British policy of 'divide and rule'. It was with their help that the foreign government sought to balance and counterpose one community against the other with a view to its own stability. The New Constitution framed by the Constituent Assembly has abolished separate electorates root and branch ; seats have been reserved for the Scheduled Classes only for a period of ten years. Common electorates have been introduced for all classes of citizens. Thus the communal problem has ceased to exist in our country in the old form.

**The New Communalism.**— It would, however, be wrong to assume that merely by abolishing the system of separate electorates and the reservation of seats for the minorities in the legislatures, local bodies and public services, we have exorcised the evil spirit of communalism completely. Even in the ordinary course, it would have taken some time for the old mentality and outlook which were so sedulously fostered to die out. Matters were made infinitely worse by what happened to the Hindus in the Punjab, N. W. F. P. and elsewhere before and after the establishment of Pakistan. The tales of woe and misery and the spirit of intense hatred and bitterness which the refugees brought with them charged the atmosphere

here ; and in Calcutta, Bihar, U. P. and Delhi, etc., the Hindus were gripped by a mad spirit of retaliation. Mahatmajee suffered intense agony of spirit because of the blood bath which Mother India was having, and he staked his all to check and control this demon. He succeeded to a great extent, and ultimately lost his life in the pursuit of this noble mission. His martyrdom succeeded in bringing people back to their senses and the spirit of communal hatred became less intense.

There are, however, certain sections among the Hindus, the Sikhs and the Muslims who are still exerting their utmost to keep up the spirit of communalism. The talk of Hindu Rashtra and Hindu Culture in which persons imbued with the spirit of the Hindu Mahasabha and the Rashtriya Swayam Sevak Sangh so frequently indulge, the campaign of a section of the Sikhs under the leadership of Master Tara Singh for the establishment of a Sikh province, the desire of some old Muslim Leaguers to retain the Muslim League in India are a clear proof of the fact that the spirit of communalism still stalks the land ; it has not been driven out. Whereas, formerly the Muslim communalism dominated the scene and the Hindu and Sikh communalisms were its bye-products, at the present time, Hindu and Sikh communalisms are in the forefront and the Muslim communalism in the background.

Every type of communalism, be it Muslim, Hindu or Sikh, is undesirable. It is undesirable because it betrays a narrow and restricted outlook and a great concern for the interests of a smaller circle as against those of the nation at large. If the country is to make progress and the nation to become strong and united, it is absolutely necessary that all the citizens must be ready to subordinate the narrow interests of their respective communities to the common interests of all. Communalism is the most dangerous enemy of democracy ; nothing will bring a democracy to ruin more quickly and more certainly than the subordination of broad national interests to a narrow, sectional good. From times immemorial India has been a secular state ; in the heyday of their power the Hindus always extended toleration to persons following other faiths and gave them equal rights and privileges. Intolerance and fanaticism are a denial of Hindu culture and incompatible with Hindu genius. Those who want to establish a Hindu Rashtra as an answer to Pakistan render

no service to Hinduism or to India ; they show by their attitude that they have not understood the true spirit of Hinduism, much less realised it in their lives. Furthermore, communalism means disunity and disunity is weakness. Disunity was the bane of our society in the past ; it led to the enslavement of the country by outsiders ; we should learn a lesson from the past and avoid all steps which tend towards disintegration. The prime need of the hour is the welding together of all castes, creeds and communities into a strong and closely-knit nation ; we should help the Muslims and others to shed away their fear by adopting a generous attitude towards them. The propagation of communalism is the surest way to make the realisation of this aim impossible.

# PART V

## EVOLUTION OF JUDICIAL ADMINISTRATION, LOCAL SELF-GOVERNMENT, Etc.

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### CHAPTER XVI

#### GROWTH OF JUDICIAL ADMINISTRATION

**Introductory.**— Soon after acquiring political power the East India Company found it necessary to establish various types of courts in Bengal, Madras and Bombay to adjudicate civil and criminal cases between the inhabitants of the territories under its control. The beginnings of the judicial branch thus antedated the establishment of the legislative branch by nearly eighty years, if we regard the expansion of the Governor General's Council by the addition of a few persons for purposes of law-making under the provisions of the Charter Act of 1853 as the beginning of the legislative organ of the Indian Government.

Before proceeding to describe the growth of the judicial administration it seems necessary to point out that the Charter of 1600, which established the Company, empowered it to exercise judicial authority over all factors, masters, mariners and other officers employed in voyages and to punish all breaches of law. Subsequent Charters extended the jurisdiction of the Company so as to include persons working in its factories. The Charter of 1660 empowered it to exercise judicial authority over the inhabitants of Bombay which had been handed over to the Company by the King. The Charters of 1683 and 1686 gave it the power to establish courts of judicature at such places as it might choose. In 1726 Mayor's Courts were established in the three presidency towns. These early phases of the Company's judicial administration may be passed over; our main concern is with the system which developed after the Company acquired political power in Bengal.

**The Double System of Courts.**— The acquisition by purchase of the three villages— Sutanati, Govindpur, and Calcutta— gave the Company the rights of a zamindar which included the exercise of wide criminal jurisdiction. The Company took advantage of this power, and a member of its council began to hold a zamindari court for both civil and criminal business. This court handled disputes between Indians, and also disputes between Europeans. Since this position was attacked by the Mayor's Court in 1755-7, the Company ordered the constitution of two separate courts, one for criminal cases and the other for civil suits. When dealing with Europeans the criminal court was a court under the Charter; when dealing with Indians it was a zamindari court. This was the beginning of the dual system of courts which ended with the establishment of the High Courts under the High Courts Act of 1861. One set of courts which came to be typified in the Supreme Court at Fort William was known as the Crown Courts, and the other as Company's Courts.

The Company Courts were established by Warren Hastings in 1772. In order to end the vicious system of Double Government set up by Clive, Warren Hastings reorganised the judicial organisation. He created Mofussil Diwani Adalats, one at the head-quarters of each district, for all civil causes. The Diwani Adalat was presided over by the district collector and other officers of the Company, and sat twice a week. From its decisions appeal lay to the Sadar Diwani Adalat at Calcutta. For criminal cases a Faujadari Adalat was set up at each district head-quarters. The Kazi and the Mufti of the district heard the cases and decided them with the help of two Maulvis who expounded the Muhammadan criminal law. Appeals against its decisions lay to the Sadar Nizamat Adalat at Murshidabad. The two Sadar Adalats were under the supervision of the Governor of Bengal and his Council.

For a long time the Company's Courts had no jurisdiction, civil or criminal, over British-born subjects of His Majesty; they dealt with disputes between Indians only. Disputes between British subjects were dealt with by the Crown Courts established under the Charters of 1726 and 1753. They were the Court of Quarter Sessions, the Mayor's Court, and the Court of Requests. They were superseded by the Supreme Court established by a Royal

Warrant under the Regulating Act of 1773 ; it continued to function for more than eighty years. As has been stated elsewhere, Supreme Courts were established at Madras (1800) and Bombay (1823) also superseding the Recorders' Courts existing there.

The Calcutta Supreme Court consisted of one Chief Justice and three other judges, all appointed by the King. The Court had jurisdiction in civil, criminal, ecclesiastical and admiralty cases ; it was also a Court of Equity. Its jurisdiction extended over all British subjects and servants of the Company. As we have already observed, due to the vagueness of its jurisdiction disputes arose between it and the Governor-General-in-Council. They were resolved in favour of the Governor-General-in-Council by the Act of 1781 which laid down that the Supreme Court had no jurisdiction in matters concerning revenue, and over acts ordered or done in its collection ; and that it could not call into question the validity of any act done or ordered to be done by the Governor-General-in-Council. It was not to apply English law to Indians in matters relating to succession and inheritance of lands, rents, and goods, and matters of contract.

The main point on which we wish to lay stress is that the Company's Courts and the Supreme Court existed side by side without there being any connection between them and also between the legal processes employed in them. The latter could not control the former and had but little authority over the general course of justice as the High Courts came to exercise at a later date. The existence of two different and independent types of courts gave rise to many inconveniences ; the exercise of powers by one set of courts was viewed with jealousy by the other. Each was also troubled by being required to administer 'three or four different sorts of law to as many classes of persons.'\* The state of affairs was remedied by the establishment of High Courts under the High Courts Act of 1861. Before proceeding to describe the changes effected by this Act mention may be made of the Judicial reforms introduced by Lords Cornwallis and William Bentinck.

**Reforms introduced by Cornwallis.**— Warren Hastings had separated not only civil from criminal courts, but also both from revenue courts. Cornwallis came to India with definite ins-

\* Cowell : *op. cit.*, page 151.

tructions from the Court of Directors to reunite the functions of revenue collector, civil judge and magistrate in one and the same person with a view to economy and simplification of administration. He carried out the instructions, and put the Diwani Adalat under the superintendence of Collectors who were mainly responsible for the collection of revenues in the district. The criminal powers of the district Collector as magistrate were increased. This combination of powers in the hands of the Collector proved too great. Six years' working of this system convinced Lord Cornwallis of the necessity of reverting to the old system. He realised that persons entrusted with the collection of public revenues were likely to abuse the powers with which it was necessary to arm them in order to enable them to enforce the government demands, and therefore needed greater check and control than other government officers. He came to the conclusion that there should be separate courts of justice to punish oppressive exactions. The evils of the union of fiscal and judicial powers in the same official are thus described by Kaye in his *Administration of the East India Company* :

'The Civil courts presided over by the revenue officers had been converted into instruments of oppression and the inhabitants of the provinces were groaning under the wrongs which had been inflicted upon them by officers, in whom the fiscal and judicial powers had been so unwisely combined and who consummated in one capacity, the injuries which they originated in the other.' (Page 336.)

Lord Cornwallis therefore introduced another change in 1793 and deprived the Collector of his judicial authority. He abolished the revenue courts and entrusted their functions to the Diwani Adalats or civil courts which were presided over by covenanted servants of the Company. He also set up four Provincial Courts of Civil Appeal, appeals from whose decisions lay to the Sadar Diwani Adalat. Cornwallis introduced reforms in the administration of criminal justice also. He removed Muhammad Reza Khan who controlled the Nizamat Adalat at Murshidabad and removed the court to Calcutta and put it under the Governor-General-in-Council aided by the chief Kazi and two Muftis. Provincial faujdari courts which were presided over by Indians were replaced by new four circuit courts presided over by the covenanted servants of the Company and aided by Kazis and Muftis. The reform of criminal courts thus eliminated Indian judges. Similar reforms were introduced in Bombay and Madras also with some modifications.

**Reforms introduced by Lord William Bentinck.**— A few words may be added about the judicial reforms introduced by Lord William Bentinck. He abolished the provincial courts of appeal which had been set up by Lord Cornwallis, because they had become 'resting places for those members of the services who were deemed unfit for higher responsibilities'. He divided the Presidency of Bengal into twenty divisions and put each one of them under the charge of a Commissioner of Revenue and Circuit. In 1831 he transferred the sessions work of the Commissioner to the civil judges. In this way the office of the District and Sessions Judge came into existence. The magisterial powers of the zillah judges were transferred to the District Collector. This led to the emergence of the District Collector and Magistrate. As has been stated above, the changes made by Lord Cornwallis had resulted in the exclusion of Indians from higher judicial posts. Lord Bentinck made some improvement in the situation by enlarging the powers of the Munsifs and the Sadar Amins and enhancing their salaries.

The system which emerged out of the reforms made by Lords Cornwallis and William Bentinck continued till the enactment of the Indian High Courts Act of 1861 which provided for the establishment of High Courts of Judicature in Calcutta, Madras and Bombay. On their establishment in 1862 the old Supreme Courts and the old Sadar Adalats were abolished, and their jurisdiction and powers were transferred to the new Courts. The distinction and difference between the courts established by the Company and those set up by the Crown at last disappeared. The Indian High Courts Act may be said to have closed the series of constitutional statutes made necessary by the transference of responsibility for the administration of India from the Company to the Crown. The new judicial organisation set up under the Act of 1861 continued, with amendments made necessary by changes in the constitutional structure, till the end of the British regime. Much of it survives till today. We may briefly describe its structure and salient features.

**The High Courts.**— Under terms of the High Courts Act of 1861, High Courts were established in 1862 at Calcutta, Bombay and Madras. They inherited all the functions of the Supreme Courts and the Sadar Diwani and Sadar Nizamat Adalat Courts which they replaced. From the former they derived their original jurisdiction,

and from the latter their appellate jurisdiction. The original jurisdiction in civil and criminal cases, was limited to the Presidency towns; they could entertain civil cases involving amounts of money exceeding Rs. 100, and in criminal cases they could try cases committed to them by the Presidency Magistrates. They also had admiralty jurisdiction in regard to crimes committed on high seas. European British subjects were tried in the High Courts for criminal offences committed outside Presidency towns. They also granted probates and letters of administration to the successors on the application of the interested parties. As matrimonial courts they granted divorce to Christians within their jurisdiction. As courts of appeal they heard appeals against the judgments of all the civil and criminal courts under their jurisdiction. They were also courts of Equity; any aggrieved party could ask for relief in equity under the usual forms of writs common in England. They could also issue writs of *Habeas Corpus*.

Every High Court consisted of a Chief Justice and other judges whose number was determined by the King-in-Council. The maximum could not exceed 15. All the judges were to be appointed by the Crown on the recommendation of the Secretary of State. At least one-third of them were to be appointed from amongst members of the Indian Civil Service, one-third from amongst members of the English bar, and the remaining one-third from other sources. The way was thus kept open for recruiting them at a later stage from among persons who were pleaders of Indian High Courts or acted as subordinate judges or judges of small cause courts.

The High Courts were given powers of administrative superintendence over all the lower courts within their territorial jurisdiction. They could make rules for regulating their procedure, calling for returns, and settling fees in the courts subordinate to them. They could also transfer cases from the lower courts to themselves. By means of these rules they kept themselves in touch with the lower courts and exercised general supervision over them. The rules required the approval of the Government of India in the case of the Calcutta High Court and of the local governments in the case of the Madras and Bombay High Courts.

At a later date High Courts were established at Allahabad, Lahore and Patna also under a provision of the Act of 1861. These had mostly appellate jurisdiction. No High Court had original

jurisdiction in any matter concerning revenue or any act done or ordered to be done in its collection. All proceedings in High Courts were to be in English. They were courts of record. Each High Court was the highest court of appeal for the province. Where the amount of money involved in a civil suit was Rs. 10,000 or more or when a substantial point of law was involved, an appeal lay against its decision to the Judicial Committee of the Privy Council. Appeal also lay in criminal cases in special cases.

At a later stage a High Court was established at Nagpur, a Chief Court at Lucknow (for Oudh), and another for Sind. The N. W. F. had a Judicial Commissioner's Court. For many purposes they were treated as High Courts.

Europeans outside the Presidency towns could be tried only in a High Court upto 1872. This practically meant a denial of justice. So the Code of Criminal Procedure framed in 1872 laid down that the European British subjects could be tried by European Justices of the Peace or European Sessions Judges. This raised no difficulty at that time since all the Sessions Judges were Europeans. But when Indians came to be appointed to the judicial service and became Sessions Judges, the question arose whether they could try European accused. The Government of India introduced a bill in the central legislature, known as the Ilbert Bill, empowering Indian Sessions Judges to try Europeans. Its fate will be described in the last section of the chapter.

**Judicial Organisation under the Act of 1935.**— The judicial administration as it existed in the sixties of the last century continued to function with necessary changes till the introduction of Provincial Autonomy under the Government of India Act of 1935. The one great change made by that Act was the establishment of the Federal Court whose composition, powers and functions have been described in an earlier chapter.

Though the High Courts were the highest courts in the provinces, they were not supreme ; appeals against their decisions lay to the Judicial Committee of the Privy Council in civil cases where the amount involved was Rs. 10,000/- or more or a substantial point of law was involved. The Act of 1935 gave the High Courts the right to hear and decide cases involving interpretation of the Constitution. Appeals against their decisions lay to the Federal Court.

**Lower Courts.**— Although it does not strictly fall within the scope of this chapter, a few words may be added about the various types of courts that existed in the provinces. As has been stated above, the High Court constituted the apex of the judicial structure. Below it were civil and criminal courts of different ranks in each district. The highest court in the district to try and decide criminal cases was that of the Sessions Judge. It was competent to try all cases committed to it and inflict the highest punishment under law, namely, the death sentence. Below it were the courts of the 1st, 2nd and 3rd class Magistrates from which it heard appeals. On the civil side, the highest court was that of the District Judge who could entertain and decide all civil suits of whatever pecuniary value. Besides it; there was the court of the Civil Judge who had similar powers. Below were the courts of the Munsiffs and the Small Cause Courts. The District and Sessions Judge was the head of the judiciary in the district. As District Judge he had jurisdiction in civil suits; and as Sessions Judge in criminal cases.

Besides the civil and criminal courts there were also in every district the revenue courts for cases concerning land rents, revenue collections, etc. The highest court was that of the District Collector who heard appeals from the courts of the Deputy Collectors and Tehsildars which were subordinate to him. Appeals against his decisions lay to the Commissioner of the Division and finally to the Board of Revenue which was the highest revenue court for the province. It should be remembered that the High Courts had no jurisdiction in revenue matters.

Mention may also be made of the courts of Honorary Magistrates and Munsiffs for the trial of minor criminal and civil cases. Honorary Magistrates generally sat as a bench and not as single magistrates.

Almost the entire judicial structure has been taken over in the new set up. The Federal Court has been replaced by the Supreme Court, and appeals from Indian High Courts to the Judicial Committee of the Privy Council have been abolished. The composition, powers and functions of the Supreme Court and some new features which have been recently introduced would be described in a subsequent chapter in Part VI.

**Salient Features of Judicial Administration under the British Rule.**— We would conclude this brief account of the growth of the judicial administration during the British regime with a reference to some of its main features.

(i) *Jury System.*— One of them was the recognition of the system of trial by jury in criminal cases. Trial by jury was considered by the British people to be a guarantee of justice and therefore a bulwark of popular liberty ; it was won by them after a hard struggle against the government. It therefore naturally found a place in the Indian system. But here it had a limited application. It was a rule in criminal cases tried by the High Courts on their original side. In the mofussil courts it was not always easy to secure the services of competent and independent jury ; therefore recourse was sometimes had to trial with the help of assessors. The difference between trial by jury and trial with the help of assessors lies in the fact that in the former the verdict of the jury is binding on the trying magistrate. He has to accept it unless he feels that it is manifestly unjust and perverse, in which case he has to refer the matter to the High Court which may set aside the verdict of the jury. The magistrate himself has no power to disregard it. One might say that in a trial by jury the jury is the tribunal, the function of the judge being to help it by summing up the evidence and arguments for and against the accused and explaining the law under which the accused is being tried. The responsibility of the jury for the decisions is in no way less than that of the magistrate. If the jury are divided among themselves, the magistrate can order the re-trial of the case by another magistrate and a different jury. In trial with the help of assessors, on the other hand, the opinion of the assessors is not binding upon the magistrate ; he might disregard it. The responsibility for the decision is that of the magistrate and not that of the assessors. The magistrate is the real tribunal, the assessors merely help him. As to the procedure to be adopted by the court there is no difference between trial by jury and trial with the help of assessors.

(ii) *Privileged Position of European British Subjects in Criminal Trials.*— The second feature of our judicial system was the grant of certain special privileges to European British subjects in criminal trials. For long Indian magistrates, even of the rank and status of

a Sessions Judge, were debarred from trying them, while their European subordinates had that right. To remove this most unjustifiable distinction a measure called the Ilbert Bill was introduced in the Central Legislature in 1883. There was a storm of protest among the Europeans in British India against the measure. As a result of their vehement opposition the Bill was withdrawn, and a compromise measure was passed the following year. It gave to the Indian District Magistrates and Sessions Judges the power of trying European accused on the condition that the latter had the right of claiming, even in most trivial cases, trial by a jury at least half the members of which must be Europeans or Americans. The compromise thus did not abolish racial discrimination in the judicial field ; it gave to the European offenders a privilege simply on the ground of their being Europeans. The distinction persisted till India became independent. It may also be pointed out that where a European British subject was involved, a second or third class magistrate could enquire into or try only those offences which were punishable with a fine of Rs. 50/-. The sentences which a First Class or a District Magistrate, or a Sessions Judge could pass on European accused were also specially circumscribed. There were other privileges granted to them which are pointed out by the Racial Distinction Committee into which we need not go. All this has become past history now.

(iii) *The Combination of Judicial and Executive Functions.*— The principle of separation of powers has been observed to a large extent in the organisation of the three organs of Government— the legislature, the executive, and the judiciary— in the provinces. It was not fully complied with in so far as the Governor had been vested with extraordinary powers of legislation, and judicial and executive functions were combined in certain officials, e. g., the District Magistrate and Collector and his subordinate executive officers, the deputy-collectors, the sub-divisional officers, and the tehsildars. Here we find the union of the executive and judicial functions which has not only meant the denial of justice to the accused in political cases, but has also led to much servility and lack of independence on the part of subordinate judiciary. As the head of the civil administration the District Collector is concerned with the collection of revenue, He is also responsible for the maintenance of law and

order. In this capacity he has to deal with individuals and institutions over whom he should not have judicial powers, lest he should use them to their disadvantage. But his position as the District Magistrate gives him power over the administration of criminal justice in the district which places the individuals who come into conflict with him at his mercy. The magistrates subordinate to him cannot deal justly and in an independent spirit in political cases, as their position and promotion depend upon the goodwill of the District Magistrate whom they cannot afford to displease. Threats like 'the sentence is inadequate ; if this occurs again I shall report your misconduct to Government' which are quoted by Sir Henry Cotton in his book *New India* show the difficulties and dangers that lurk in the combination of judicial and executive functions. Indian opinion has long been highly critical of it : attempts have recently been made to take away the judicial functions of the District Magistrates.

(iv) *Appeals.*— The Indian system allows a wide latitude for appeals in civil, criminal and revenue cases. Two appeals are allowed in civil cases with the right of appeal in the third instance to the Judicial Committee of the Privy Council (now to the Supreme Court), if the amount of money involved is Rs. 10,000/- or more. In criminal cases one appeal is permitted. Applications for revision against the decision of the appellate court are also permitted. Two appeals are allowed in revenue cases also.

In civil suits an appeal lies to the court of the district judge or the civil judge from the courts of the munsifs. Against the decisions of the appellate court, a further appeal lies to the High Court. An appeal from the court of the civil judge or from that of the district judge lies to the High Court and from the latter to the Privy Council (now the Supreme Court). Appeals from the High Court sitting as a court of the first instance are heard by its appellate side. If the question concerns the interpretation of the Act (or an Order-in-Council) an appeal lies to the Federal (now Supreme) Court.

In criminal cases an appeal against the decision of a court of the second or third class magistrate lies to the court of a first class magistrate specially empowered in this behalf by the District Magistrate. An appeal against the decision of a first class magistrate lies to the Sessions Judge ; while an appeal against a decision of the

Sessions Court lies to the High Court. An application for revision can be heard by the Sessions Court against the judgment in appeal given by a first class magistrate, and by the High Court against the judgment in appeal given by the Sessions Court. The right of appeal is restricted in cases tried by jury.

In revenue cases appeals from the decisions of the Collector lie to the Divisional Commissioner, and thence to the Board of Revenue. Only in a few revenue cases involving partition, etc., appeals may lie to the High Court.

The highest court of appeal for India was the Judicial Committee of the Privy Council in England. It had no original jurisdiction. It was the final court and entertained appeals from all parts of the British Empire. An appeal against a decision of the High Court in civil cases lay if the amount of money involved was Rs. 10,000/- or more, and a question of law as distinguished from a question of fact was involved. Similarly, in criminal cases an appeal lay only if a substantial question of law was involved. Permission to file an appeal was to be granted by the High Court. Independent India has abolished appeals to the Privy Council. Now the Supreme Court is the final and the highest court for the whole of the Indian Union.

This rather wide latitude for appeal has a bad effect. It encourages litigation and makes justice expensive. Litigation in India is more expensive than in most other countries. The heavy charges levied by the members of the legal profession and the cost of court fees and stamp duties combine to make administration of justice a costly affair in our country.

## CHAPTER XVII

### FINANCIAL DEVOLUTION

**Introductory.**— Before the introduction of provincial *autonomy* under the Government of India Act of 1935 the Government of India was highly centralised ; the provinces were mere administrative units and had delegated authority only. But even under the highly centralised and unitary system there had been a measure of legislative and financial devolution. In this chapter we propose to trace the various steps taken towards financial devolution which paved the ground for the complete separation of provincial from central finance under the Act of 1935.

**Conditions upto 1870.**— In the early days of the Company's rule the provinces of British India enjoyed a large measure of financial and legislative freedom. The Charter Act of 1833 robbed the provinces of this freedom by introducing a high degree of administrative centralisation. By laying down that 'no Government shall have power of granting any new office or granting any new salary, gratuity or allowance without the previous sanction of the Governor General', the Act of 1833 brought provincial finance under central control. All the revenues of British India were regarded as constituting a single fund and were applied to the purposes of the Government of India as a whole. All the financial powers were concentrated in the Governor-General-in-Council. The Acts of 1853 and 1858 made no difference in the degree and amount of financial centralisation. The Government of India Act, 1858, provided that 'the expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of such revenues ..... shall be made without the concurrence of a majority of votes at a meeting of the Council.' Since the Secretary of State could not directly control the financial administration of British India from a great distance, he had necessarily to delegate a good deal of his authority to the Governor-General-in-Council. Under the system thus established all the rates of taxation and the manner of their collection and the authority for expenditure were determined by the Government of India; the provincial governments acted as the

agents of the Central Government both for collecting revenue and expending what was given to them to meet provincial expenditure. They had no powers of taxation or borrowing; they had no legal right to the revenues raised within their territories. Whatever money they had was given to them by the Central Government and it had to be spent as directed by the latter. In short, all the monies went into the coffers of the Government of India, and all expenditure had to be defrayed under its orders. The position occupied by the Provincial Governments in financial matters was described by Sir John Strachey in the following words :

"The whole of the revenues from all the provinces of British India were treated as belonging to a single fund, expenditure from which could be authorised by the Governor General in Council alone. The Provincial Governments were allowed no discretion in sanctioning fresh charges. They could order, without the approval of the Supreme Government, and without its knowledge the adoption of measures vitally affecting the interests of millions of people; they could make changes in the system of administration that might involve serious consequences to the state; they could, for instance (and this is a case which actually occurred), alter the basis on which the assessment of the land revenues had been made, but they could carry out no improvements, great or small, for which the actual expenditure of money was required. If it became necessary to spend £ 20 on a road between two local markets, to rebuild a stable that had tumbled down, or to entertain a menial servant on wages of 10 shillings a month, the matter had to be formally reported for the orders of the Government of India. No central authority could possibly possess the knowledge or find the time for the efficient performance of such functions throughout so vast a country. The result was complete absence of real financial control, frequent wrangling between the Supreme and Provincial Governments, and interference by the former not only in financial but in administrative details with which the local authorities alone were competent to deal. Under these circumstances, as Sir Richard Strachey wrote at the time, the distribution of the public income degenerated into something like a scramble, in which the most violent had the advantage, with very little attention to reason; as local economy brought no local advantage, the stimulus to avoid waste was reduced to a minimum, and as no local growth of the income led to local means of improvement, the interest in developing the public revenue was also brought down to the lowest level.\*"

**Steps in Progressive Financial Devolution.**— (i) Realising that under such conditions there could be no efficient financial administration, the Government of Lord Mayo took the first step towards financial decentralisation by its famous Resolution of 1870. He transferred to provincial control the following heads of expendi-

\* Strachey : *India, Its Administration and Progress*, page 112-13. (3rd Edition). (Quoted by C. L. Anand : *The Government of India*, page 91.)

ture: Jails, Registration, Police, Education, Medical Services, Printing, Roads, Civil Buildings, and Miscellaneous Public Improvements. Expenses on them were to be met from receipts under those heads and fixed grants from the Centre. Provincial Governments were given complete freedom to allot their revenues to the several heads at their discretion. Each of them was to publish in the local gazette its yearly estimates of income and expenditure and to place them before the local Legislative Council. Previous sanction of the Government of India was made necessary for the creation of posts carrying a salary of more than Rs. 250 p. m. The Central Government, was however not to interfere in the administration of the services handed over to the provinces except when it became necessary to do so in the discharge of some responsibility. The Governor-General-in-Council hoped that the adoption of this new policy would lead to greater care and economy in provincial administration and import 'an element of certainty in its fiscal system which has been hitherto absent', and also 'produce greater harmony in action and feeling between the Supreme and Provincial Governments than has hitherto prevailed.'

The chief defect of this system was that the imperial grants were made on the basis of expenditure in the various provinces in 1870-71. No attempt was made to redress existing injustices or to give grants on the basis of the actual needs of the provinces. Its other defect was that, while giving to the Provincial Governments the stimulus to distribute their resources properly and spending them economically, it did not generate in them the desire to observe economy in the collection of revenues; the excise and stamp duties were notoriously evaded and the government suffered. Nevertheless, the adoption of the system produced good results. In the words of Roberts, 'Lord Mayo found serious deficit and left substantial surplus. He found estimates habitually untrustworthy, he left them thoroughly worthy of confidence. He found accounts in arrears and statistics incomplete, he left them punctual and full.'\*

(ii) The second step was taken by the Government of Lord Lytton in 1877. It transferred to provincial governments the following new heads of expenditure: Land Revenue, Excise, Stamps, General Administration, Stationery, Law and Justice. To meet the

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\* Quoted by Sethi: *The Last Phase of British Sovereignty*, page 56-7.

expenses of administering these heads the Provincial Governments were given a share in the revenues derived from excise, stamps, law and justice, and some other miscellaneous items, on the condition that the Supreme Government would take half of the excess of realised income over the estimated income. It also promised to meet deficits to the extent of one-half. This step was taken with a view to inducing the Provincial Governments to take greater interest and care in the collection of revenues in their territories than they did in the past.

(iii) These experiments proved successful. Therefore the Government of Lord Ripon took a further step in financial devolution. By its Resolution of 1881 it increased the responsibilities of the provincial governments in financial matters still further. It put an end to the system of giving provincial governments fixed sums of money to cover the difference between provincial expenditure and provincial income, and divided the heads of revenue into three classes : imperial, provincial and divided. Revenues from the imperial heads which included Land Revenue, Customs, Posts and Telegraphs, Railways, Opium, Salt, Tributes, Mint, Home Charges and Military Receipts, were to go to the Central Government ; while the Provincial Governments were to retain revenues derived from Civil Departments and Provincial Public Works. Excise, Stamps, Forests, Registration were made divided heads ; revenues from them were to be equally shared between the Centre and the Province in which they were collected. Any deficiency in provincial receipts was to be made good by giving the province a fixed percentage of income from land revenue collected in it. The advantage of this system was that it gave the provincial governments direct interest not only in provincial revenues but also in the collection of land revenue, one of the most important Imperial heads.

(iv) The Resolution of 1882 made another important change ; it introduced the principle of quinquennial settlements. The division of revenues once made was to continue for five years. The provincial governments were not to look to the Central Government for any special aid, except in the case of severe famine ; and the Imperial Government was not to make any demand on the provincial governments except in the case of 'a disaster so abnormal as to exhaust the imperial reserves and resources, and to necessitate a suspension of

the entire machinery of public improvement throughout the empire.\* The settlement made in 1882 was renewed in 1887, and again in 1892 and 1897 without any modification of principles. The system of quinquennial settlements had certain defects which were pointed out by the Lt. Governor of Bengal. He said that at each of these revisions 'the provincial sheep is summarily thrown on its back, close clipped and shorn of its wool, and turned out to shiver till its fleece grows again. The normal history of a provincial contract is this— two years of screwing and saving and postponement of works, two years of resumed energy on a normal scale, and one year of dissipation of balances in the fear that if not spent they will be annexed by the Supreme Government, directly or indirectly, at the time of revision.' Instead of producing fiscal certainty, the system of quinquennial settlements gave rise to an element of uncertainty on the part of provincial governments because of the fear that the Supreme Government would swoop down upon them and take away their savings. They therefore became indifferent to economy, and fought for a larger share of revenues.

(v) These defects were removed by Lord Curzon in 1905. He revised the shares of the Central and Provincial Governments in the divided heads of revenue and also in the expenditure on them and declared them to be quasi-permanent. They were not subject to revision except in case of a grave imperial necessity. In addition to their share in revenues, the provincial governments were also to receive lump-sums from 'windfalls' or unexpected surpluses to meet expenditure on works of public utility. The share of a provincial government was determined in the light of the expenditure it was expected to incur in administering the subject and its needs; the Central Government was to take only the residue. This step gave great satisfaction to the provincial governments.

**The Royal Commission on Decentralisation.**— The whole question of the financial relation between the Central and Provincial Governments was looked into by the Royal Commission on Decentralisation appointed in 1907. It submitted its report in February, 1909. The report expressed satisfaction with the financial relations between the Government of India and the Governments of the Provinces and recommended that the revenues to be assigned to a

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\* Chuni Lal Anand : *op. cit.*, page 94.

province should be determined in the light of its requirements, and that the Central Government should take only the residue. It recommended further decentralisation in regard to Public Works, Land Revenue, Forests, Police and Medical Administration. To meet the growing requirements of the provinces the Commission recommended the progressive provincialisation of divided heads of revenue.

The Government of Lord Hardinge accepted the recommendations of the Commission and sought to give effect to them through its resolution on provincial finance adopted in May, 1912. In view of the criticism that the old assignments perpetuated historic inequalities the Government of Lord Hardinge revised the settlements, and after making certain adjustments declared them to be *permanent*. The new settlement revised the division of heads of revenue into imperial, divided and provincial, and made some more heads wholly or in part provincial, thereby augmenting the provincial resources. This led to a proportionate reduction of fixed assignments, and to a revision of the policy of giving lump-sum grants to the provinces out of central surpluses. The intervention of the Central Government in the preparation of the provincial budget was also reduced.

The financial relations between the Centre and the Provinces as they stood on the eve of the Montford Reforms may be summed up as follows:—

Subjects were divided into three heads: Central, Provincial and Divided. All the revenues derived from subjects classed as Central were allotted to the Government of India which was responsible for their administration. Revenues derived from provincial subjects were allotted to the provincial governments, and were to be utilised for their administration. Revenues from divided heads were shared between the Central and the Provincial Governments according to rules laid down by the Decentralisation Commission. The Government of India had complete control over taxation; there was no decentralisation so far as taxation was concerned. All proposals for taxation from provincial governments had to go to the Government of India for sanction; they were scrutinised by the Finance Department to see that they did not in any way conflict with the taxation policy of the Centre. Provincial budgets had to be submitted to the Government of India for approval before they could be placed before

local legislatures. The Provincial Governments could not borrow money for financing their projects; the power to borrow was vested exclusively in the Secretary of State in Council.

Notwithstanding all the steps towards financial decentralisation taken since 1870, the Provincial Governments remained subject to the control of the Government of India which was exercised in several ways, some of which have been indicated above. The various Codes like the Civil Accounts Code, the Public Works Code, and the Civil Service Regulations also restricted the power of Provincial Governments to make new appointments or raise the salaries of old ones. In a word we can say that whatever limited freedom was given to the Provinces in financial matters was granted to them by the Government of India for administrative convenience; the former had only delegated authority which could be increased or withheld at the will of the Government of India.

Finally, the reader may be reminded that the Government of India themselves were subject to the control of the Secretary of State for India in Council which constituted the final authority in all matters relating to revenues of India and their appropriation for any purpose in India or outside. The provision contained in the Government of India Act, 1858, to that affect has already been reproduced on page 477 above.

**Financial Relations under the Act of 1919.**— The authors of the Montford Report on Constitutional Reforms found these restrictions and limitations on the financial powers of the Provincial Governments incompatible with their purpose of introducing a measure of responsible government in the provincial sphere. The separation of provincial from central finance and the grant of ampler resources to the provinces became necessary for giving effect to the new policy announced in the historic declaration of August 20, 1917. Under the Montford Reforms the control of the Government of India over Provincial Governments in financial matters was greatly reduced. Provincial budgets were completely separated from the Central budget; it was no longer necessary for the Provincial Governments to obtain the approval of the Governor-General-in-Council for their budgetary proposals before submitting them to the local legislatures. In the second place, divided heads of revenues were abolished; for revenue purposes subjects were now classed as central and

provincial only. Irrigation, land revenue, forests, stamps were among the main sources of provincial revenues ; while the Central Government was left with receipts from customs, excise, income-tax, railways, posts and telegraphs. As the proposed scheme of distribution of revenues left the Centre with inadequate funds, the Meston Committee, which was appointed to look into the question and suggest ways for making the central deficit good, recommended that the Provincial Governments should make contributions to the Government of India. It drew up a scale according to which the different provinces were to contribute to the Centre. The provincial contributions were made the first charge upon provincial revenues. The system of provincial contributions was subjected to much hostile criticism and its abolition was demanded. Provincial contributions were gradually reduced, and the system was finally abolished in 1927-28.

For the first time the Provincial Governments were given the power to levy taxes of a strictly local nature and to raise loans on the security of their allocated revenues. Loans could be raised only for specific purposes and with the previous sanction of the Governor General in Council, if raised within India, and with that of the Secretary of State in Council if raised outside India. The taxes which the Provincial Government could levy were also enumerated ; the list included tax on land other than agricultural, tax on succession, taxes on amusements, luxuries, and advertisement, and on registration fee.

It may also be mentioned that the Act provided for the establishment of a finance department in each province under the control of a member of the Governor's executive council.

The net result of the new financial arrangements made in accordance with the recommendations of the Montford Report was to give the provinces greater autonomy in financial matters than they enjoyed before. The amount of control exercised by the Governor General in Council was relaxed to a considerable extent. But the sources of revenue assigned to the provinces were inelastic, and to a degree insufficient for the development of nation building departments under the control of popular ministers. The next important step in financial decentralisation was taken by the Government of India Act, 1935, which made a radical change in the

status of the Provinces.

**Financial Relations under the Act of 1935.**— The financial relations between the Government of India and the Governments of the Provinces were put on a radically different basis by the Government of India Act of 1935, which proposed a federal polity for the country. The Provinces became autonomous units of the proposed Indian Federation and therefore provincial finance was separated completely from federal finance. Separate sources of revenue were assigned to the Centre and to the Provinces. The main heads of revenue allotted to the Provinces and to the Centre have been described on page 316 above, and therefore need not be repeated here. Here we would state only this much that the division of revenues, which was made on the basis of the report of the Committee appointed by the Government of India in 1936 with Sir Otto Niemeyer as its chairman, did not conform to the federal principle strictly; a *complete separation* of provincial from federal revenue could not be achieved. There were some taxes which were levied and collected by the Government of India but assigned to the provinces; e. g., succession duties in respect to property other than agricultural land, stamp duty in respect of bills of exchange, promissory notes, terminal taxes on goods or passengers carried by rail or by air, etc. The proceeds of certain taxes levied and collected by the Centre were shared between the Centre and the provinces; taxes on income other than agricultural income, salt duties, excise duties on tobacco and other goods produced in India. Certain restrictions on the borrowing powers of the provinces were retained. Provinces were also given financial assistance by the Centre to meet deficits in certain cases.

The financial relations between the Government of India and the Governments of the States under the New Constitution will be described elsewhere.

## CHAPTER XVIII

### GROWTH OF LOCAL SELF-GOVERNMENT

**Introductory.**— Besides the executive, legislative and judicial organs, modern states have developed institutions of local self-government which enable the residents of small areas, urban as well as rural, to manage local affairs like sanitation, medical relief, water supply, lighting of roads, primary education, and roads and ferries. Municipal boards, district boards, taluka boards, village panchayats are among the chief agencies of local self-government in India. They not only relieve the pressure on central or provincial government and enable the utilization of local knowledge and talent in the service of the people, but, what is more important, also constitute the best school for training in active and good citizenship. Local self-governing institutions constitute the cradle for democracy. Democracy flourishes best in a country which has a long tradition of local self-government ; e. g., Great Britain. As De Tocqueville wisely remarked : 'A nation may establish a system of free government, but without the spirit of municipal institutions, it cannot have the spirit of liberty.' It is therefore necessary to cast a glance at the development of local self-government in India during the British period.

We would make the opening sentence of the chapter on Local Self-Government contributed by Mr. J. H. Lindsay, M. A., to the Cambridge History of India, Vol. VI, our starting point. He writes :

'The story of local self-government in British India reveals a long drawn out effort to retain what was good in existing institutions and to reinforce these wherever necessary by ideas which had been proved to be useful in England.'

Since an effort was made by the Government of British India to retain what was good in the then existing institutions of local self-government, a few words about them would not be out of place here.

**Local Self-Government Institutions in pre-British India.**— During the Hindu period a village community used to have a number of functionaries for carrying on the administration of its common affairs. They included '(1) the *headman* who acted as a general superintendent, arbitrator, and collector of revenue in the village ;

(2) the accountant who kept the account of cultivation; (3) the watchman, who gave information of crimes, exhorted travellers, and guarded the crops; (4) the boundaryman who preserved the limits of the village; (5) the superintendent of tanks and watercourse; (6) the priest; (7) the schoolmaster; (8) the astrologer; and (9) the village artisans, namely, the smith and carpenter, the potter, the washerman, the barber, and the poet. All these were servants of the village community and were remunerated for their public services either by grant of land or by a share in the grain.\*

Principal Anand goes on to say that the most important feature of village government in the olden days was the Panchayat or the village council. It was mainly concerned with administrative and judicial work. It is difficult to say anything definite about the way it was constituted; the method varied from place to place. At some places it might have consisted of the heads of the families in the village, at others of all the adult male members, and at still other places of a smaller number of persons elected by the people. Its procedure was informal: it may be best described in the following words of Sir Herbert Risley: 'The method by which the Panchayat is elected cannot be expressed in terms of European political phraseology. The people get together and they talk, and eventually an opinion emerges from their talk which is the opinion of all of them. There is no majority, for they are unanimous; there is no minority, for the minority has been talked over and casts in its lot with the majority. The process can only be described as selection by acclamation.'†

**British Attempts to Retain the Useful Elements of the Old System.**— This system of village administration functioned during the Muslim period. It lost its vitality and efficiency with the decline of the communal spirit (communal in the sense of being concerned with the welfare of the community as a whole), and as a result of the anarchy and disorganisation that followed the disintegration of the Mughal empire. The British Government retained the village headman, the accountant and the chowkidar, but with the vital difference that they became the servants of the Government and were paid by it in cash, and not of the village community. The British Government also made some attempts to revive the village panchayats.

\* C. L. Anand: *The Government of India*, pages 128-9.

† Quoted by Principal Anand, *op. cit.*, page 129.

Elphinstone, the Governor of Bombay, declared in 1821 : 'Our principal instrument must continue to be the *panchayat* and that must continue to be exempt from all new forms, interference and regulation on our part.' Sir Thomas Munro, protesting against the proposal to absorb the village watch and ward of Madras into the regular police force, wrote in 1824 : 'No system for any part of the municipal administration can ever answer that is not drawn from the ancient institutions or assimilated with them.' The British authorities tried to utilise the village watch and ward system by associating it with the regular police force of the country, and the village *panchayat* for famine relief. But the attempts did not succeed ; the entire spirit which lay under the old system had departed ; it was difficult to call to life parts of what was once an organic whole.\*

It may be added that with the dawn of freedom a serious attempt was made to revive the village panchayats in many provinces. Village Panchayat Acts were passed and panchayats established in numerous villages. The experiment did not succeed ; elections were fought on communal basis ; the spirit of community the presence of which alone can make the institution successful was conspicuous by its absence. The Village Panchayat Acts could create only the external framework of democracy in rural areas, but not infuse the necessary spirit in it. Little wonder, the experiment failed to achieve the result expected from it.

**Municipal and Rural Boards introduced by the Company's Government.**— The British were more successful in their attempt to introduce new institutions modelled on the British Borough and County Councils than in retaining what was good in the ancient system. The first step in this direction was taken as early as 1687 when James II delegated to the East India Company the power of establishing a corporation at Madras with powers to levy taxes. Under orders from the Court of Directors a Corporation was set up at Madras consisting of a mayor, twelve aldermen, and about sixty burgesses. It was thus modelled on the British type. It did not enjoy a long life however. In 1726 a charter was granted for creating municipalities at Bombay and Calcutta and reconstituting the

\* Those interested in studying the attempts made by the British Government to revive indigenous village institutions may study *Village Government in British India* by J. Mathai. A short account would be found in Principal Anand's *Government of India*, Chapter VII.

corporation at Madras. The experiment of establishing municipalities in urban areas was confined only to the three presidency towns until 1842 when an Act was passed, applicable only to Bengal, enabling the inhabitants of any town to make 'better provision for purposes connected with public health and convenience'. It was a permissive measure; it could be applied only to those places two-thirds of whose inhabitants applied for it and agreed to meet the cost by direct taxation. Only one town availed itself of the opportunity. A number of municipal boards were constituted in the various provinces under Acts passed between 1864 and 1868 in various provinces. Their chief function was to improve the sanitary conditions in towns. They were set up for administrative convenience and not with a view to the introduction of self-government in the municipal sphere. Their members, known as Municipal Commissioners, were nominated by the Government; the people of the locality had no share in their choice. It should also be remembered that no similar bodies were set up in rural areas; the experiment was confined to towns only.

**Lord Mayo's Resolution.**— The beginnings of local self-government in India can be traced to Lord Mayo's famous resolution on provincial finance to which reference was made in the preceding chapter (on Financial Devolution). It laid stress on the necessity of developing local self-governing institutions in the following words :

'But beyond all this (the need for financial devolution) there is a greater and wider object in view. Local interest, supervision, and care are necessary to success in the management of funds devoted to education, sanitation, medical charity and local public works. The operation of this resolution in its full meaning and integrity will afford opportunities for the development of self-government, for strengthening municipal institutions, and for the association of natives and Europeans to a greater extent than heretofore on the administration of affairs.'

Municipal Acts were passed in several provinces providing for the introduction of the elective principle to some extent in the composition of the municipal boards whose number was increased. To provide finances for them local rates and cesses were imposed. In some provinces a portion of the income was entrusted to local

rural committees. The attempt met with little success. Election was resorted to in a small number of cases, and where it was applied, the best men did not like to stand for election. The reason for the failure of the scheme may be due to the fact that not enough power or responsibility was entrusted to the local bodies.

The Government of India issued a fresh Resolution on Provincial Finance inviting the provincial governments to ascertain what items of receipt and charge could be transferred from Provincial to local heads for administration by local committees comprising non-official, and wherever possible, elected members, and what items already local but not so administered might be so administered, and to suggest measures necessary to ensure more local self-government. In 1881 the Government of India issued circular letters to provincial governments indicating the items of expenditure which could be entrusted to local bodies. Though the District Collector remained the *ex-officio* chairman of the local district committee, the Resolution laid stress on the importance of reducing official interference in its work. It asserted that it would be impossible to expect any real development of local self-government if the local bodies were subject to check and interference in matters of detail.

**Lord Ripon's Resolution on Local Self-Government.**— Of far greater significance in the history of the growth of local self-governing institutions in India than the Resolution of Lord Mayo is the Resolution issued by the Government of Lord Ripon in 1882. One may say that it marks the *effective* beginning of local self-government in the country. What existed prior to it was local administration which was introduced for the sake of administrative convenience. What Lord Ripon sought to achieve was the introduction of local self-government as 'an instrument of political and popular education'. Improved efficiency in administration, Lord Ripon thought, would follow in course of time as local knowledge and local interest were brought to bear more freely on local administration.

The following are the main points stressed in the Resolution :

(i) An effort should be made to set up a net-work of local boards both urban and rural, throughout the country, and they should be charged with definite duties and entrusted with definite funds. In order that the rural boards should be able to secure local interest and

local knowledge their jurisdiction should not be very wide. The idea was to establish district and taluka boards in rural areas and municipal boards in cities. These boards were to be entrusted with expenditure of fixed allotment of funds for specific purposes as well as with the management of certain local sources of revenue.

(ii) With a view to making provision for local *self-government*, the Resolution suggested that the official members of a local board should not constitute more than one-third of its total strength. The non-official members were to be chosen by election wherever the system was practicable. The basis of election should be as wide as local circumstances might permit. In order to attract respectable persons to the boards it was proposed to give them the courtesy titles of Rai, Rao or Khan Bahadur, during their term of membership.

(iii) Realising that the earlier attempt of Lord Mayo failed to produce satisfactory results because of excessive official interference, the Resolution recommended that wherever possible the local boards should have an elected non-official chairman. The choice was subject to the approval of the provincial government. The absence of an official chairman was calculated to make the non-official members feel that real power was being placed in their hands.

(iv) Official control was to be exercised from without rather than from within. The approval of the District Magistrate was made necessary for the raising of loans, the imposition of taxes other than duly authorised, the alienation of municipal property, etc. The provincial government was given the power to set aside the proceedings of the Board in particular cases, and to suspend a Board for continued and gross neglect of duties.

Shortly after this Resolution was issued, Local Self-Government Acts were passed in various provinces to give effect to the policy laid down in it. Municipal and District and Taluka or Sub-District Boards were established in many provinces. In Bombay, Assam and Bengal the elective principle was introduced to a large extent; while in the Punjab the method of nomination was retained in the case of 12 districts out of 29. In N. W. F. P. members of all the district boards were nominated, while in Madras all the members of sub-district boards were nominated. The District Magistrate continued to be the *ex-officio* chairman of district boards in Madras, and to be the nominated chairman in Bombay and Bengal, whereas in the U. P.

where members were allowed to elect their chairman, they generally chose the Collector. It would thus appear that the intentions of Lord Ripon were not realised to the extent he expected, and the progress towards local self-government was slow. That however does not detract from the position occupied by his famous Resolution on Local Self-Government which shall ever remain memorable in the annals of India. It put forward in a most convincing manner the case for local self-government and answers the objections that can be raised against it.

**Decentralisation Commission's Report.**—The next landmark in the growth of local self-government in India is the Report submitted by the Royal Commission on Decentralisation which surveyed the whole field in 1907-9. It suggested the establishment of village panchayats for the administration of local affairs, and the revival of sub-district boards with enlarged powers and greater independence. These sub-boards were to have independent sources of income and separated spheres of work. Along with them there was a board for every district with powers of coordination and financial powers for the district as a whole. The Commission recommended that local bodies be given greater control over their budgets and freer powers of appropriation. As regards the composition of the local bodies it recommended the extended use of the elective principle. It however favoured the retention of the principle of official chairman in the case of district boards. For municipal boards the Commission favoured elected non-official chairmen.

The Government of India invited the provincial governments to express their views on the recommendations of the Commission. After considering them it arrived at its own opinion and embodied its views in a comprehensive Resolution in April 1915. It accepted the recommendations on the whole, and advised the provincial governments to introduce them gradually.

**The Resolution of 1918.**—Meanwhile, Mr. Montague made his historic pronouncement on the policy of His Majesty's Government towards India in the House of Commons on August 20, 1917. It necessitated a revision of its views on the part of the Government of India in regard to Local Self-Government. The Government of India issued another Resolution on the subject on the 16th of May, 1918. Its basic principle was that responsible institutions 'cannot be

stably rooted until they are broad-based and that the best school of political education is the intelligent exercise of the vote and the efficient use of administrative power in the field of local self-government'. The Resolution recommended the gradual removal of all unnecessary control over local bodies. With a view to complete popular control over local bodies the Resolution recommended that they should ordinarily have substantial elected majorities and elected non-official chairmen. A small number of persons were to be nominated by the provincial government to give representation to minorities and secure official experience. In certain cases municipal boards could elect an official as their chairman. Since the rural areas were deemed to be less advanced than urban areas, the provincial governments were urged to arrange for the election of chairmen wherever possible, and in any case to encourage the appointment of non-official chairmen. Municipal Boards were given a freer hand in the preparation of their budgets. The degree of control from outside was to be relaxed. The Resolution also asked the provincial governments to encourage the growth of village panchayats.

An immediate effect of this Resolution was that in all provinces except the Punjab the District Magistrate was relieved of his work as the Chairman of the local district board..... Before effect could be given to the other recommendations, Mr. Montague visited India and the Report on Constitutional Reforms was issued. Its recommendation that the development of local self-government should be entrusted to the provincial governments changed the picture a good deal. Under Dyarchy local self-government was made a transferred subject under popular ministers and achieved considerable progress.

**Summary.**— Local bodies like district and municipal boards in India were an import from Great Britain; they were introduced by the British Government on the model of British county and borough councils. Substantial progress could not be achieved in this direction because the government officials lacked the imagination of Lord Ripon and sacrificed the educative principle and the avowed policy of directing the growth of local self-government from without than controlling it from within to the desire for immediate results and efficiency. Officials were continued on local bodies for a much longer period than was necessary; their prolonged presence impeded

the growth of local initiative and responsibility. The paucity of funds for local self-development was another serious handicap. The principle of election also was not sufficiently developed. The overall result of all these factors, particularly of the large amount of official control from both inside and outside, practically made the local bodies departments of government. Prior to the Montford Reforms 'local self-government in India belonged to the deconcentrated type, the district officer was an officer of the Central Government operating in a particular district. As chairman of the District Board and often of one or more municipalities, he was carrying out the will of his official superiors. It was just one of his many activities..... In effect outside a few municipalities, there was nothing that one should recognise as local self-government of the British type.'

**Local Self-Government under Dyarchy.**— As has been pointed out above, the Montford Reforms not only placed the entire responsibility for the growth of local self-government on the provincial governments but also placed it under the charge of a popular minister everywhere. Very naturally the popular ministers were anxious to introduce the greatest possible degree of popular control and responsibility in local bodies. Municipal and District Boards Acts were passed in almost every province, lowering the franchise and increasing the elected element in local bodies. The system of nomination was retained only for securing the representation of minorities and expert official advice. Nominated officials were denied the right to vote; they could only participate in the discussion and give advice. All Municipal and District Boards came to have elected non-official chairmen. In this way official control from within was completely eliminated; local bodies were given the greatest possible measure of freedom to develop their resources and spend their income upon items enumerated in the Acts. Provincial Governments, however, continued to exercise control over them from outside in several ways which shall be described later on. Laws were also passed to set up village panchayats.

In spite of the best efforts of the ministers to make local self-government as great a success as possible, progress was rather slow. Ministers found themselves handicapped by inadequate finances. The finance department, which was in the charge of an executive

councillor responsible to the Governor, generally adopted a step-motherly attitude towards the demands of the popular ministers, particularly after the departure of Mr. Montague from the India Office.

**Progress during Provincial Autonomy.**— With the introduction of provincial autonomy under the Government of India Act, 1935, popular ministries everywhere took up the question of local self-government reform with great earnestness. Committees were appointed in provinces like Bombay and U. P. to study the problem and report on it. In some provinces, e.g., N. W. F. P., legislation was introduced with a view to reforming the local bodies. In Bombay village panchayats were reorganised and reforms introduced in the case of other local bodies. But as popular ministries functioned in many provinces for a short period of twenty-eight months only, the problem of reorganising local self-government on a comprehensive scale could not be successfully tackled anywhere. During the years of constitutional deadlock no progress was possible. When popular ministries were reinstated in 1946 the task of reform was again taken up. Bills were introduced in many provincial legislatures to give effect to the proposals made by committees of enquiries. Great stress was laid upon setting up village panchayats and endowing them with wide administrative and judicial powers.

**Progress since Independence.**— The pace of reform of local bodies was naturally accelerated after the attainment of independence. In practically all the states fresh or amending legislation was undertaken to democratise the constitution of the existing local bodies, extend their functions and liberalise their finances. Direct election of municipal and district boards was introduced in states where the indirect system existed during the British regime. In U. P. the Chairmen of Municipal Boards came to be elected by the voters. Local self-government was introduced and developed in areas previously under the more or less autocratic rule of the Princes. In conformity to the letter and spirit of one of the Directive Principles of State Policy which requires the States to organise village panchayats 'and endow them with such powers and authority as may be necessary to enable them to function as units of self-government', many States passed panchayat legislation of varying patterns.

The adoption of planning and the establishment of community development and national extension service centres in many rural areas necessitated the consideration of the question of the relation between them and local bodies. This question was examined by a Committee presided over by Shri Balwantray Mehta which recommended a complete overhauling of rural self-government throughout the country on a uniform basis.

**Kinds of Local Bodies.**—Local self-governing bodies in India can be divided into two main categories: urban and rural. The main urban bodies are Corporations for big cities like Calcutta, Bombay, Madras, Delhi, Lucknow, Kanpur and Varanasi; Municipalities for smaller cities having a population of 20,000 and above; Cantonment Boards for urban military areas; and Improvement Trusts for developing new sites in growing cities in a planned manner. For developing townships in rural areas there are Town and Notified Areas (for populations between 10,000 and 20,000 and below 10,000 respectively). Among the main rural bodies mention may be made of District Boards and Village Panchayats. In some states there were intermediate bodies between these two, and were known as Tahsil or Taluka Boards. The tendency for them was to disappear. Tahsil Boards were abolished in U. P. in 1906 and in Madras in 1934. A two-tier system of local institutions for rural areas was thus developing. But the publication of the Balwantray Mehta Committee Report has suggested a new three-tier organisation. An attempt has been made to implement it in Rajasthan. A striking change in the organisation of rural self-governing institutions has been made there which may serve as a model for other States to follow. A three-tier hierarchy with Village Panchayat at the base, the Panchayat Samiti at the block level, and the Zila Parishad at the district level has been set up. The Village Panchayat is directly elected, whereas the Panchayat Samiti and the Zila Parishad are indirectly elected and are composed mainly of the presiding officers of the local self-governing bodies immediately beneath them. The presiding officers of the Village Panchayats, known as Sarpanchas, are automatically members of the Panchayat Samiti, and the presiding officers of the Samitis, known as Pradhans, are members of the Zila Parishad. Cooption of members at village and block level is recommended to insure representation of scheduled castes, scheduled tribes, women and persons associated with the cooperative

movement and rural development. Members representing the District in the State Assembly are associate members of the Panchayat Samitis, and also of the Zila Parishad, but have no right to vote. Broad powers of planning, budgeting and implementation have been conferred upon these bodies. Procedures have been devised for annual budget planning as well as for monthly programme planning. The District officer plays the role of adviser and coordinator, but has been given no powers of decision-making or intervention in the system.

**Functions of Local Bodies.**— It is not necessary to state the functions entrusted to local bodies in our country and describe the sources from which they derive their income. It is sufficient to remark that the functions performed by our municipal boards are less extensive than those performed by corresponding Borough Councils in England. They do not perform any police functions and their trading enterprises and social services are much less extensive. This backwardness is due to the failure of the State governments to formulate plans of local progress and enforce them, as well as to their restricted financial resources. The State Governments should formulate five or ten-year plans of local progress and help the municipal boards to fulfil them. In his excellent study, *Local Self-Government in India*, Dr. M. P. Sharma suggests that the Central Government should maintain a central organisation for coordination of policy, research, collection of statistics and information on local self-government.

The functions of District Boards are even less developed than those of Municipal Boards. Much leeway has to be made in the matter of compulsory primary education of boys and girls and public health and sanitation. Their road mileage is small and the existing roads are often in a bad condition. It may be mentioned here that the Balwantray Mehta Committee recommended the abolition of the existing District Boards and the setting up of Zila Parishads and Panchayat Samitis in their place.

**State Control over Local Bodies.**— In the course of our preceding survey we saw that one reason why local self-government did not make much headway in our country before the Montford Reforms was the excessive degree of official control exercised from within and without. Control from within was gradually relaxed as

the number of nominated and official members progressively decreased and as official chairmen came to be replaced by elected non-official chairmen. But however self-governing a local body may become, some sort of central control from without is indispensable. The aim of central control is not to restrict and curb the activities of local bodies but to help them in performing their functions more efficiently and to ensure that they do not go beyond their limits in tapping their financial resources. It is exercised through legislation, finance and administration. The State Government determines the constitution and functions and powers of local bodies by legislative enactments whose detailed application is regulated by means of rules. The rules 'regulate such important matters as the number of members for particular local bodies, preparation of electoral rolls and conduct of elections, assessment and collection of taxes, and hundreds of other things.\* Administratively, the control is exercised through the right to inspection and information, the power of sanctioning its regulations, suspending its resolutions in specific cases, hearing appeals from its employees, removing particular members or the chairman, and in extreme cases by superseding or dissolving the Board itself. The State exercises control over the finances through its power of sanctioning the proposals for raising loans, taxation proposals, and in some cases by sanctioning their budgets. The audit of the Boards' accounts is done through a State agency. Judicially the State Government decides controversies between two or more Boards and conflicts of jurisdiction between a Board and its Committees and officers. The Courts have the power to interpret local laws and declare *ultra vires* all local Acts if they exceed the legal powers of the State Legislature.

.. The control so far exercised by the State Government over local bodies has been rather formal and negative in character, and not positive and constructive. Its aim has been to check the acts and resolutions of the Boards against the violation of rules and orders rather than to scrutinise them from the point of view of efficiency and propriety. There is however the danger that positive and constructive control may become excessive and impede the growth of local autonomy. Here as elsewhere it is difficult to strike the proper mean.

In the Balwantray Mehta scheme, which holds the field to-day

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\* M. P. Sharma : *Local Self-Government in India*, page 152.

and is likely to be adopted by all the States of the Union, there is a clear departure from the Anglo-Saxon pattern which was being followed by the British authorities. It is an attempt at 'the fusion of the traditional local functions and state functions in the hands of the same agency',\* and involves an officialization of this agency to a greater extent than before. Under it local bodies may become 'local organs of central power' as they are in Soviet Russia. This would be the natural consequence of the attempt to connect local bodies with planning. There seems to be no other way to secure popular participation in the work of planning than to associate Village Panchayats and Panchayat Samitis and Zila Parishads with the development and planning work which is being looked after at the district level by the District Collector in his capacity as the District Development Officer. As time passes and the Balwantray Mehta scheme is progressively implemented, the pattern of local self-government would take on a new hue in the country.

\* *Ibid*, page 20.

## CHAPTER XIX

### GROWTH OF THE PUBLIC SERVICES (CIVIL)

**Introductory.**— The Civil Services constitute no less important an organ of the government of a country than its executive, legislature and judiciary. Nay, in a way the former are even more important than the latter. The efficiency of administration depends more on the character and spirit of the permanent civil servants than upon the ability and intelligence of the ministers. A good deal of the efficiency of British administration in India was due to the character and competence of the higher ranks in the covenanted service of the Company and of the civil services under the Crown. It is therefore desirable to cast a glance at the growth of the public services in British India.

**The Earliest Phase.**— In the early days of the Company, even after it had acquired some political power, the routine work of administration was done by the 'writers' and 'factors' who were ill-paid and had received no training for the work. They cared more for profit than for efficient administration, and were not reluctant to engage in private trade and to receive bribes and illegal gratifications. This made the administration of the Company during the period of Double Government in Bengal most corrupt and rapacious. Clive sought to end the evil by compelling the servants of the Company to enter into a covenant by which they bound themselves not to engage in private trade and take presents and bribes. This is why the phrase 'Covenanted Civil Service' came into being. The next step in the development of the services was taken by Lord Cornwallis who reserved all the senior jobs for Britishers and raised their emoluments. Indians could be appointed to subordinate positions only. Cornwallis proceeded on the assumption that Indians were not fit to be entrusted with high and responsible positions. The Charter Act of 1793 put its seal of approval on the policy of Cornwallis by providing that 'all vacancies happening in any of the offices, places or employments in the civil line of the Company's service in India should, subject to certain specified restrictions, be filled from among the Company's civil servants.'

It would be recalled that appointments to all the posts were made by the Court of Directors. The persons appointed by them were sent to India without any training or probation. To remedy this defect Lord Wellesley established a college at Calcutta for their training. Persons coming to India as civil servants were required to undergo a three years' course in Indian languages, law and history, before they could hold office. The Directors did not approve of this scheme, and established in 1806 a college of their own at Haileybury for the purpose. The Act of 1813 provided that no person could be appointed a writer or factor in India unless he had completed 4 terms at Haileybury and produced a certificate to that effect from its principal. The College at Haileybury continued to function till 1858.

**The Later Phase.**— For a long time there were no restrictions upon the Directors' powers of making appointments in India; they distributed the patronage as they pleased, taking care to reserve some share to the President of the Board of Control. The Charter Act of 1833 made some difference by providing that the Directors should nominate twice as many candidates to the College at Haileybury as there were vacancies to be filled, and only the topmost candidates were to be sent out to India. In 1853 Sir Charles Wood, who was President of the Board of Control, proposed the introduction of open competitive examination for admission of candidates to the Haileybury College. Parliament accepted the proposal; thenceforth appointments to the covenanted civil service of the Company in India came to be made on the basis of a competitive examination held in London. The examination was open to all natural born subjects of Her Majesty, whether European or Indian, between eighteen and twenty-three years of age. With the transference of the governance of India from the Company to the Crown in 1858 the Haileybury College was closed, and the power of making appointments to the Indian Civil Service was made over to the Secretary of State for India. The Principle of competitive examination was re-affirmed, but the maximum age limit for admission was lowered to twenty-two years. An year's probation in England was prescribed for selected candidates. In 1866 the age limit was lowered to twenty-one, and the probation period was increased to two years. The effect of these measures was to practically exclude Indians from the Civil Service. It was exceedingly difficult for Indian youths to

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compete for the Civil Service in England before completing 21 years of age. In 1870 only seven Indian candidates competed of whom only one was successful. With a view to encouraging Indian young men to resort more freely to England for their education and preparation for civil and other services in India and other learned professions, the Government of John Lawrence proposed to award nine scholarships of £ 200/- each per annum to suitable candidates. The proposal did not find favour with the Secretary of State for India.

The existing arrangements for making appointments to the Indian Civil Service rendered nugatory the hopes held out in 1833, and the promise made in 1858 that Indians were to be 'freely and impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability, and integrity, duly to discharge.' To redeem that pledge the Government of India Act of 1870 provided that nothing in any Act of Parliament or other law in force in India should restrain the authorities by whom appointments were to be made to offices and employment in the covenanted civil service from appointing 'a native of India to any such place, office or employment although such native should not have been admitted to the civil service in the manner already prescribed by law'. The Governor-General-in-Council was to make rules by which Indians who had not passed the Civil Service Examination could be appointed to posts reserved for those who had qualified by passing the examination. It took the Government of India full nine years to prescribe the required regulations. They empowered the Governor-General-in-Council to appoint 'young men of good family and social position possessed of fair abilities and education' to posts reserved for the Indian Civil Service. These nominees were called 'statutory civil servants'. Their number was not to exceed one-sixth of the appointments made by the Secretary of State in England each year. This scheme did not work well. The sixty-nine persons who were appointed under the rules did not possess sufficient educational qualifications and were often found unequal to their responsibilities. The scheme was abolished after having been tried for eight years.

It may be mentioned that in 1878 the age limit for admission to the Civil Service Examination in England was reduced to nineteen. As the lowered age limit was found to press hardly on Indian

students, it was raised to 23 in 1892, and to 24 in 1906. Throughout the period between 1871 and 1914 the number of Indian candidates who sat for the competitive examination continued to increase though slowly; from 7 in 1870 the figure went up to 26 in 1914. The number of Indian candidates who qualified in 1914 was 7, as against 49 Britishers. It was the highest figure since 1870. In 1900 only two Indians qualified and in 1910 one. The total number of successful Indians from 1870 to 1914 was 17 only.

**The Aitchison Commission.**— Meanwhile, the Indian National Congress had come into existence in India. At its very first session held in 1885 it demanded that simultaneous examinations be held in India and in England for admission to the Indian Civil Service. This was the only way in which Indians could secure appointment to higher posts in the Indian Civil Service. To examine this question and to devise a scheme which would do full justice to the claims of Indians to higher and more extensive employment in the public services of the country Lord Dufferin appointed in 1886 a Commission under the chairmanship of Sir Charles Aitchison. The Commission rejected the idea of holding simultaneous examinations in India and England, and held that in order to maintain the distinctly English character of the Indian Civil Service the entrance examination should be held only in England. It recommended the abolition of the scheme of 'statutory civil service' as it had failed to fulfil the expectations of its authors.

In order to secure the appointment of a larger number of Indians to the higher posts the Commission proposed a reduction in the number of posts reserved for persons recruited by the Secretary of State for India in England. The remaining vacancies thus created were to be filled by promotion from the ranks of what were then called the 'uncovenanted services'. In other words, the Aitchison Commission recommended the dropping of the terms 'Convenanted' and 'Uncovenanted' Services, and proposed the division of all the services into three classes: Imperial, Provincial, and Subordinate. The Imperial services were to be recruited by the Secretary of State in England on the basis of open competitive examination the age limit for which was to be raised to 23. The Provincial Services were to be recruited by each provincial government to meet its own requirements. The salaries of the members

of the provincial services were to be independently determined and were to have no relation to those paid to the members of the Imperial services. A certain number of posts reserved for the Imperial services were to be thrown open to members of the provincial services. These posts came to be known as 'Listed' posts. After consulting the local governments the Government of India decided to list ninety-three posts.

**Proposal to hold Simultaneous Entrance Examinations in India.**— The Government of India had just completed the reorganisation of the public services in accordance with the orders finally passed on the recommendations of the Aitchison Commission when it was asked by Lord Kimberley, the Secretary of State for India, to consider the resolution passed by the House of Commons on June 22, 1893, favouring the holding of simultaneous examinations in India and England for admission to the Indian Civil Service. All the provincial governments, except that of Madras, expressed themselves against the resolution. They were opposed to any material reduction of European staff in the interest of the stability of the British rule. The Government of India also was opposed to the resolution; it argued that the step would dangerously weaken the British element in the civil service. The Muslims were also opposed to it. Her Majesty's Government accepted the views of the Government of India and dropped the idea of holding simultaneous examinations. The Secretary of State decided that the best way of meeting the legitimate claims and aspirations of Indians were to promote such persons to the higher services as had 'distinguished themselves by their capacity and trustworthiness in the performance of subordinate duties'.

It may be mentioned in passing that to meet the growing needs of the country several new all-India services had come into being, besides the Indian Civil Service. The chief among them were the Indian Police Service, the Indian Medical Service, the Indian Service of Engineers, the Indian Forest Service, and the Indian Educational Service.

**The Islington Commission.**— In March, 1911, a notable debate took place in the Central Legislative Council in which non-official members strongly pleaded for a larger share of Indians in the superior public services. The Government of India appointed a new

Public Services Commission under the chairmanship of Lord Islington. Shri Gopal Krishna Gokhale was a member of this Commission. The Commission submitted its report in 1915, but due to the situation created by the war it was not published before the middle of 1917.

'By that time', wrote the authors of the Report on Indian Constitutional Reforms, 'the war had raised the pitch of Indian expectations to an extreme height, and we are not surprised that a report which might have satisfied Indian opinion two years earlier was generally denounced in 1917 as wholly inadequate. The Commission proposed that some services should be entirely recruited in India and that the Indian element in others should be largely increased. But their assumption that British responsibility for India requires a preponderating proportion of British officers in the security services did not recommend itself to many Indian critics.\*'

In view of the fact that the recommendations of the Islington Commission were duly considered and amplified by Mr. Montagu and Lord Chelmsford in their Report nothing more need be said about them. We may pass on to the recommendations made by them in their Report on Indian Constitutional Reforms which were given effect to in the Government of India Act of 1919.

**Recommendations of the Montford Report.**— Mr. Montagu had declared in the House of Commons that progressive realisation of responsible government was the goal of British policy in regard to India and that the provinces were the domain in which the first steps towards it were to be taken. Since responsible government presupposes a sufficiently large number of persons versed in the whole art of government, the authors of the Report recommended that the number of Indians in the public services of the country should be substantially increased. They wrote as under :

'We regard it as necessary that recruitment of a largely increased proportion of Indians should be begun at once. The personnel of a service cannot be altered in a day : it must be a long and steady process ; if therefore the services are to be substantially Indian in personnel by the time India is ripe for responsible government no time should be lost in increasing the proportion of Indian recruits.' (§ 313)

In order that the characteristics of the services be maintained, and that there should be no such swamping of any service with any new element that its whole character might suffer a radical change, they recommended that such a number of Indians be admitted to

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\* *Report of Indian Constitutional Reforms*, section 12.

the various services as they might be able to train in an adequate manner and inspire with the spirit of the whole. They also thought that it would be unwise to create a demand which would exceed the supply. In view of these general considerations the authors of the Report recommended that 33% of the superior posts be recruited in India, and that this percentage should be increased by 1½% each year until the appointment of a new Commission. Since the existing method of recruitment by competitive examination held in England could not possibly supply the required number of Indian candidates, the Report recommended the holding of simultaneous examinations in India and England. Indian candidates selected on the basis of the entrance examination could be sent to England for training which was deemed necessary. The Report also recommended the removal of racial discrimination in making appointments to all branches of the public services.

Both the restriction of the number of Europeans in the public services and the constitutional changes alike rendered it necessary that India should attract the best type of European officers available. With this end in view the Report recommended better scales of pay, pension, leave and overseas allowances to the civil servants recruited in England. Since the grant of better pay, leave and overseas allowances was likely to encounter some opposition from Indians, the authors thought it fit to protect the interests of the civil servants. They recommended that every public servant, whatever the Government under which he was employed, provincial or central, should be supported and protected in the legitimate exercise of his functions and that his rights and privileges should be made secure to him. The Government of India Act of 1919 gave effect to all these recommendations.

Some members of the Services were upset by the prospect of the establishment of partial responsibility in the provincial sphere and saw danger in being subjected to the control of Indian ministers. To all such persons option was given to retire prematurely on proportionate pensions. It is estimated that by 1924 about 345 officers of the All India Services had availed themselves of this concession. Many Civil Servants had volunteered for war service and lost their lives in it. There was thus a paucity of European personnel in the Indian Services. Suitable candidates were not offer-

ing themselves for the entrance examination in London on account of changed political conditions. On the other side, Indians were not satisfied with the speed with which the Services were being Indianised. Some Ministers were of the view that in as much as the Civil Servants working under them could look to higher authorities for the enforcement of their views, their authority was being undermined; they came to the conclusion that the appointment and control by the Secretary of State was not consistent with the spirit of the Reforms. To examine the question the Government of India appointed a Royal Commission in 1923. It is known as the Lee Commission after the name of its Chairman, Lord Lee.

**The Lee Commission Recommendations.**— With a view to the maintenance of ministers' control and authority over the senior civil servants working in the transferred departments the Commission recommended that future recruitment to the Indian Educational Service, the Veterinary and Civil and Medical Services, and the Roads and Buildings Branch of the Service of Engineers by the Secretary of State in London should be completely stopped. Recruitment to them should henceforth be done by the Provincial Governments, and these services should form part of the Provincial Services. But each Provincial Government was to employ in its Civil Medical Department a certain number of officers belonging to the Indian Medical Service for the convenience of the European members of the Civil and other Services. Recruitment to and control over the Indian Civil Service, the Indian Police Service, the Indian Forest Service, the Indian Medical Service, and the Irrigation branch of the Service of Engineers was to continue in the hands of the Secretary of State. But to meet the nationalist point of view the proportion of the Indian element in them was increased. For the Civil Service direct recruitment was to be half Indian and half European. In addition to this 20 % of the superior posts were to be filled in by promotion from the provincial cadre. It was calculated that on this basis in 1939 there would be 715 European and 643 Indian members in the Indian Civil Service. For the Police Service direct recruitment was to be made in the proportion of five Europeans to three Indians. In addition to this 20 % of the vacancies were to be filled by promotion from the Provincial Service. On this basis half of the senior posts in the Police would have been held by Indians in 1949. Similar proportion was recommended for

Irrigation Deptt. In the Forest Service 75 % of the recruitment was to be Indian. Different percentages and quotas were determined for Central Services in the Political Department, Customs, and Posts and Telegraphs Departments. The Commission recommended that Public Services Commission provided for by the Government of India Act of 1919 should be appointed without further delay.

The Home Member of the Government of India moved a resolution in the Central Legislative Assembly that the recommendations of the Commission be approved in principle. Pandit Moti Lal Nehru, leader of the Swarajist Party, moved the amendment that they be completely rejected. The Assembly accepted the Swarajist amendment by a majority of 68 against 46. But the Council of State accepted the resolution as originally moved by the Home Member.

**Public Services under the Act of 1935.**— The Lee Commission had recommended the classification of public services into three categories : Imperial, Provincial, and Subordinate. It had recommended that when the reserved subjects in the Provinces would be transferred to popular control in the future, the services manning them should also be provincialised. The Government of India Act of 1935 did not endorse this view. It placed the public services in the following three groups : Services recruited by the Federal Government ; Services recruited by the Provincial Governments ; and Services recruited by the Secretary of State for India. Recruitment to the Federal Services was to be made by the Governor General. Recruitment to the Railway Services was to be made by the Federal Railway Authority, and the staff attached to the Federal Court was to be appointed by the Chief Justice. In making appointments to the Customs and Posts and Telegraphs departments due regard was to be paid to the past services of the Anglo-Indian community.

Appointments to the Provincial Services were to be made by the Governor subject to some special provisions laid down in the Act. Recruitment to the Indian Civil Service and the Indian Police Service which were always regarded as the security services, and to the Indian Medical Service and appointment of chaplains were made the concern of the Secretary of State.

The Act of 1935 contained special provisions for safeguarding the rights and privileges of persons appointed to the Civil Services in India. It was made a special responsibility of the Governor

General and of the Provincial Governors to secure 'to members of the public services any right provided for them by the Constitution Act and the safeguarding of their legitimate interests.' No civil servant recruited by the Secretary of State could be dismissed or reduced in rank without an opportunity being given to him to defend himself ; and no post could be abolished without giving its occupant an adequate compensation. The salaries, pensions, etc., of the federal and provincial Civil Servants were made a charge upon the federal and the provincial revenues. Civil Servants 'were indemnified against civil and criminal proceedings in respect of all actions done in good faith in the course of the discharge of their duty ; and no such proceedings could be initiated without the discretionary permission of the Governor General or the Governor.'\* This was done to shield them against the possible accusations launched by Indian politicians under provincial autonomy.

Finally, mention may be made of the provision for the appointment of a Federal Public Services Commission contained in the Act of 1935. The main function of the Federal and Provincial Public Services Commissions was to conduct examinations for recruitment to the various services within their respective jurisdictions. The Federal and Provincial Governments were to consult them on all matters relating to the methods of recruitment, principles to be followed in making appointments, promotions, transfers, disciplinary action taken against public servants, etc. More functions could be entrusted to them with the previous sanction of the Governor General or the Governor.

**Concluding Observations.**— From the preceding survey of the development of the public services in British India it becomes clear that the dominant idea of British statesmen in India and in England was to preserve the essentially British character of the Civil and other Services. From the days of Lord Cornwallis onwards they were obsessed with the notion that Indians were not competent enough to be entrusted with higher and responsible jobs. In 1853 it was stated in the House of Commons that the universal rule and practice in Indian administration was "native agency and European superintendence". This is the reason why the clause in the Charter Act of 1833 and the sentiments expressed in Queen Victoria's Pro-

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\* Sethi : *The Last Phase of British Sovereignty*, page 66.

clamation of 1858 remained dead letters for long ; and when Indians began to be appointed to the senior posts, the process of Indianisation was very slow. There were, of course, some liberal-minded Britishers who regretted the exclusion of Indians from all share in the government of their country during the rule of the Company. Sir Thomas Munro, for example, bemoaned that there was no example of any conquest in which the natives had been so completely excluded from all share in the government of their country as in British India. Sir John Malcolm regretted that there was no opening for the natives of India.

The process of Indianisation of the Civil Services was painfully slow upto the Government of India Act of 1919. As has been pointed out earlier only seventeen Indians were recruited by the Secretary of State in the Indian Civil Service during 44 years from 1870 to 1914. It was accelerated under the Montford Reforms, but the progress did not satisfy Indian politicians. We are suffering from the evil effects of the British policy of keeping the civil services in India a preserve of the British ruling class for as long as they could ; even to-day we do not possess enough administrative experience and skill in the country. It may be expected that the situation would brighten up as time passes.

## CHAPTER XX

### EVOLUTION OF THE LEGISLATIVE ORGAN

**Introductory.**— Although we have traced at great length the evolution of the central and provincial legislatures at appropriate places in our account of the development of the Indian Constitution, it would not be out of place here to recapitulate in a very brief manner its salient points without going into details.

**Absence of an Independent Legislative Organ in the Early Stages.**— In the early stages of the Company's rule the government set up by it had no separate legislative organ; as happens in the case of all despotic governments the executive authority had the power to make rules and regulations for carrying on its work. This was in accordance with the Charter of 1600 which authorised the Company to make reasonable laws, constitutions, orders and ordinances not repugnant to English law for the good government of the Company and its officers. This state of affairs continued till the passing of the Charter Act of 1853 which for the first time drew a distinction between legislative and executive functions and laid down a special procedure for law-making. 20 years earlier the charter of 1833 had added a Law Member to the Governor General's Executive Council to assist in the drafting of Bills. The appointment of the Law Member may be regarded as the embryo out of which the subsequent legislative organ of the Government of India was born. But his appointment did not in any way differentiate the legislative activity of the Government from its executive function; legislation remained a part of the functions of the executive organ.

**The Growth of the Legislative Organ.**— The beginnings of the legislative organ are to be found in the enlargement of the Governor General's Executive Council for the purposes of law-making by the addition of six nominated members four of whom represented the various provinces according to the provisions of the Charter Act of 1853. Here for the first time in the history of the Company's rule in India one finds a clear and unmistakable differentiation of the legislative machinery from the executive; legislation was regarded as 'a special function of Government requiring special

machinery and special processes.\*

The next step was taken by the Indian Councils Act of 1861. It is famous for two reasons :— (i) It associated non-official Indian opinion with the work of law making for the first time, though the Indian members were nominated by the Governor General. They were to be not less than six and not more than twelve in number, and were to be appointed for a two-year term. It was an advance on the Act of 1853 in two respects : the strength of the additional members was raised, and some of the members nominated were to be non-officials, and therefore presumably Indians. All the additional members under the Act of 1853 were officials, and thus Europeans. (ii) It restored to the Governments of Madras and Bombay the powers of legislation which had been taken away from them by the Act of 1833. The executive councils of the Governors of Bombay and Madras were also to be expanded for legislative purposes by the addition of official and non-official members. The Act empowered the Governor-General to establish similar legislative councils for the North Western Province (Agra) and the Punjab.

In order to appreciate the development effected by the Indian Councils Act of 1892 it must be borne in mind that the Councils established under the Act of 1861 were nothing more than law-making committees whose sole purpose was to advise and assist the executive in their legislative work. They had no deliberative functions; they could ask no questions and criticise no acts of the administration or ventilate grievances. The Act of 1892 marked a distinct advance upon its predecessor in two ways :— (i) By conceding to the Councils the right of asking questions and discussing (but not of voting upon) the budget, it made them something more than mere law-making committees; they acquired the character of a deliberative assembly to a small degree. (ii) It indirectly recognised the principle of election. The non-official members whose strength was increased were to be nominated on the basis of recommendations made by specified bodies. It is hardly necessary to point out that the strength of the Councils, central as well as provincial, was increased, even though the increase was rather paltry.

The Indian Councils Act of 1909 marks a still greater advance

upon the Act of 1892. Not only was the strength of the Councils very considerably increased, the non-officials (nominated and elected) constituted a majority in every provincial Council. In Bengal there was even a clear elected majority. In the Centre, however, the official majority was kept. The powers of the Councils were greatly extended; they were given the power to discuss the budget before it was finally settled, and to propose resolutions on it and divide the house on them. They could move resolutions on matters of general public importance and vote on them. The right of asking one supplementary question was given to the member who put the original question. All this meant the abandonment of the old conception of the Councils as legislative committees of the Government and the conversion of them into deliberative bodies. But in spite of all these newly added powers and functions they did not become parliaments; they could not enforce responsibility on the executive which remained as autocratic and irresponsible as before.

**New Element Introduced by the Act of 1919.**— The Indian Councils Act of 1909 marked the last stage in the development of the principle enunciated by Lord Dufferin in 1886; namely to make the councils more and more representative of Indian opinion without giving them any power to control the executive. All the strings of power were kept in the hands of the executive. No further progress along this line was possible. The Government of India Act of 1919 broke wholly new ground by introducing the principle of responsible government to a limited extent in the provincial sphere. It provided for substantial elected majorities in the provincial Legislative Councils and in the Central Legislative Assembly and making the ministers responsible to the Councils for the administration of the transferred subjects. So far as the transferred half was concerned provincial Legislative Councils took on the character of parliament. In the Centre however the executive remained as irresponsible to the Assembly as before. The powers of the Assembly were considerably increased; it became a deliberative body with limited power over the purse. But all that it could do was to influence the executive; it could not control it to the smallest degree. The Act of 1919 introduced the principle of bicameralism; the Central legislature was to consist of two chambers, the Legislative Assembly and the Council of State.

**Progress under the Act of 1935.**— The next landmark was reached by the Act of 1935. The official block disappeared completely for the first time ; all the members of the provincial legislative assemblies came to be directly elected by the people on a much wider franchise, and the entire executive was made responsible to the legislature. In the Centre also the nominated official block was to be abolished, and the ministers were to be made responsible to the Federal Assembly. It is necessary to add that the special responsibilities and discretionary powers of the Governor General and the Governors took away a large slice from the powers of the Central and Provincial legislatures. In other words, even under the Act of 1935 the ideal of responsible government was not fully realised ; the extent to which the popular legislatures could control the executive was limited. The Act of 1935 extended the principle of bicameralism to some of the provinces.

It must always be remembered that, to say nothing of the Councils constituted under the Acts of 1861, 1892, and 1909, the legislatures established under the Acts of 1919 and 1935 were non-sovereign bodies. They had no constituent powers ; they could not alter, amend or repeal the Constitution of the country ; the power of altering, amending and repealing the Constitution resided in the British Parliament. Acts passed by them could be disallowed by the Governor General, or the Governor, and also by the King. Their powers of making laws were also circumscribed in various ways. It is not necessary to go into details here.

The principle of election was gradually introduced. As has been stated earlier it was introduced in an indirect manner by the Act of 1892, and directly by the Act of 1909. But except in the case of some special constituencies like those created for the Muslims and the Chambers of Commerce, election was indirect under the Act of 1909. It became direct for the general constituencies for the first time under the Government of India Act of 1919. The franchise was restricted in many ways ; it was based on property and literacy qualifications. It was greatly extended by the Act of 1935 which enfranchised women, but did not become universal. Universal franchise was introduced only when India became free.

**A Unique Feature of the Growth of Legislature.**— Finally, we may refer to one aspect of the growth of powers of the legislature

in India which seems to be almost unique. As they grew, the powers of the Governor General also grew in proportion, as if to counter-balance them. This was a necessary consequence of the principle on the basis of which British policy was based since the decision to associate Indians with work of government was taken and acted upon. This principle was stated by Lord Dufferin in his Minute of 1886. His enunciation deserves to be quoted again. He wrote as under :—

‘We shall be falling into a great error if ..... we were to relax in the slightest degree our grasp of the supreme administration of the country. If we hold firmly to this principle, and remain fully alive to our own Imperial responsibilities, ..... we can give full play to the legitimate and praiseworthy ambition of the ..... educated classes in India who are desirous of taking a larger share than hitherto in the transaction of the public business of their respective provinces.’

A few examples may be cited to illustrate it. When the decision was taken in 1853 to expend the Governor General’s Executive Council for purposes of law-making by nominating six officials to it, the Governor General was given the power to issue ordinances in cases of emergency without consulting his council. While the Act of 1861 associated nominated non-officials with the work of legislation, previous sanction of the Governor General was made necessary to the introduction of bills in certain cases, and the Governor General was given the power to disallow acts of the central and local legislatures. The Act of 1892 which gave the members of the legislature the right to ask questions also empowered the Governor General (and also the Provincial Governors) to disallow them in certain cases. The Act of 1909 introduced the elective principle but robbed it of all significance by simultaneously introducing the principle of communal electorates and making election indirect, and in some cases doubly indirect. The legislatures could move resolutions and divide the house on them ; but the resolutions were mere recommendations which the executive could disregard at its sweet will. As has been stressed many a time before, the principle of autocracy remained fully entrenched while the legislative councils were being liberalised both as regards their functions and their composition.

The same story is repeated in the period from 1919 onwards. The Montford Reforms introduced partial responsibility in the Provinces but left enough powers in the hands of the Provincial Governors to impose their own will on the popular ministers. The

Governors were not merely constitutional heads of the state in relation to the transferred subject. They were given the power of certifying Bills rejected by the legislative council and of restoring grants refused or reduced by it if they thought it necessary to do so in the discharge of their responsibilities for the administration of the reserved subjects. In the Central Legislature the value of a substantial elected majority in the Legislative Assembly was sought to be counterbalanced by the setting up of an oligarchic and conservative Council of State with equal and coordinate powers of legislation, and by giving the Governor General the powers of certification and restoration of grants reduced or refused by the popular house. He was given special powers of legislation in the form of issuing ordinances and enacting Governor General's Acts. The Act of 1935 is full of the special responsibilities and discretionary powers of the Governor General and the Governors which made provincial autonomy and partial responsibility in the centre a farce. Very appropriately it was remarked that responsibility lay buried several fathoms deep under the load of the special responsibilities and discretionary powers of the Governor.

What we have said is enough to prove the point that with each instalment of reforms the powers of the Governor General and the Governors were enlarged so as to leave sufficient power in their hands to safeguard imperial interests.

## CHAPTER XXI

### THE INDIAN STATES

**Introductory.**— Though India is one of the neatest geographical units in the world, flanked by an almost impenetrable high mountain wall on the north and girt in by seas on the east and the west, and though her people are knit together by a deep underlying unity of culture, she has seldom, if ever, been politically one and undivided. The existence of a multiplicity of independent states has been the rule rather than the exception throughout her long and chequered history. Even under great emperors like Ashoka and Samudragupta 'a diversity of autonomous states constituted the mosaic of an empire. The emperor claimed suzerainty over these rulers, who offered allegiance to him; subordinated their foreign policy to his diplomatic moves; usually served him in war, and offered him tribute; but who, in other respects, retained their sovereignty. Whenever the authority of the Emperor weakened, the subordinate rulers asserted their independence.'\*

The story repeated itself after the death of Aurangzeb. The Mughal viceroys and subordinate rulers began to assert their independence, and political adventurers began to carve out for themselves principalities out of the fast dissolving Mughal Empire. The result was that when the East India Company acquired power in the country and began to consolidate its position, it had to deal with a large number of ruling chiefs. It gradually brought them under its sway and by the time power was transferred to the Crown in 1858, about two-thirds of the map of India was coloured red. The rest (ignoring the small enclaves under the control of the French and the Portuguese) was coloured yellow to mark territories ruled by Indian Princes. These territories did not form part of British India and their inhabitants were not British subjects, although the rulers thereof were subordinate to the British Power which was paramount. These rulers owed allegiance to the British Queen who assumed the title of Empress. It should be remembered that the part of India coloured yellow which has sometimes been described as Indian India

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\* V. P. Menon : *Integration of the Indian States*, page 1.

or Princely India was not one administrative unit. 'It was a political medley' composed of hundreds of heterogeneous states, some of them big but most of them small, some modern but most of them feudal, and some liberal but most of them autocratic. It was only after the attainment of national freedom in 1947 that the distinction between British India and Princely or Indian India disappeared and the whole country from Kashmir to Kanya Kumari and from Assam to Kathiawar (with the exception of Pakistan) constituted one political unit under one supreme government. The story of the integration of the States will be told towards the close of the chapter. For the present our concern is with the relations existing between the British Government and the Princes from the beginning of British rule down to its end in 1947.

**The Relationship between the Indian States and the Company.**— The relationship did not follow any unvarying pattern during the British rule; it changed with the growth of British political power and prestige. Following Sir William Lee Warner we may distinguish three stages in it. The first is known as the Ring-Fence Policy, the second as Subordinate Alliance, and the third came to be described as Paramountcy during rule by the Crown. We shall add a few words about each.

**Ring-Fence Policy.**— At the start of its political career the East India Company was not very strong; it could not dominate the powerful Marhattas or the Nizam as it dominated the puppet Nawab of Bengal, and could not interfere in their internal affairs. Whenever it entered into any treaty with an independent ruler, it had to do so on a basis of equality. The policy of neutrality however did not stand in the way of the Company fighting against the States whenever occasion demanded and extending its territorial possessions at their cost. As this policy did not easily accord with the expansionist aims of persons like Wellesley and Hastings, it was abandoned and the policy of subordinate alliance was adopted in its place.

**Subsidiary Alliance Policy.**— Convinced that the British must become the paramount power in India one day, Lord Wellesley quietly laid aside the instructions given to him by the Court of Directors not to meddle with Indian rulers and began to work for the realisation of his idea. He introduced the system of subsidiary alliances with the Indian States. A State accepting this system

agreed to make no wars and to carry no negotiations with any other State without the Company's knowledge and consent. The bigger States were to maintain armies commanded by British officers and their rulers were required to cede certain territories for the maintenance of those forces. The smaller States were required to pay tributes to the Company. In return the Company was to protect them against external aggression and internal rebellion. A British Resident was to be installed in every big State entering into subsidiary alliance with the Company.

This system gave the Company great power over the States accepting it. It enabled the Governor General to be present in every such State by proxy ; it assured the Company of the loyalty of the ruler. It allowed the Company to post trained troops at strategic points and key positions without any cost to itself. It has been described by Menon as 'the Trojan Horse tactics in empire-building'.

This policy was further developed by Lord Hastings who extended it to almost all the States. 'By the time he left the country in 1823, the British Empire in India had been formed and its map in essentials drawn. Every State in India outside the Punjab and Sind was under the Company's control. "His official seal no longer acknowledged the Governor General as the servant of the Mughal empire and with the fiction of the Moghul Government ended, the British empire of India stood in its place."\*

Besides placing the States accepting it under the complete control of the Company's government so far as their foreign relations were concerned the system of subordinate alliance gave the Company a great amount of influence over their internal administration also, though in theory the Company did not lay claim to such interference except in grave cases. Its Residents did not remain merely diplomatic agents representing a foreign power, but gradually transformed themselves into executive and controlling officers of a superior government. The airs assumed by them are well illustrated by what one Col. Macaulay wrote to the Raja of Cochin when he was on his way to the capital. He said : 'The Resident will be glad to learn that on his arrival near Cochin, the Rajah will find it convenient to wait on him.' Subsidiary alliance was the thin end of the wedge that later on developed into paramountcy.

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\* V. P. Menon : *op. cit.*, page 6.

The second noteworthy feature of subsidiary alliance system was the isolation in which the States accepting it were forced to stand. None of them could have any direct relations with any other State. There was no possibility of their meeting together and deciding on any common course of action. This is why the system is sometimes described as that of subordinate *isolation*.

The third noteworthy thing about the system was that the contents of the treaties entered into between the Company's government and the Princes varied greatly from one case to another, and their language was not infrequently inconsistent. The treaties with Baroda, Mysore and Oudh gave the Company wide powers of interference in their internal affairs, besides giving it control over their foreign relations. The treaties with Rajput States, while giving the Company control over external relations and entitling it to the resources of the States in the event of war, stipulated that the princes would be absolute rulers in their own territories. Treaties concluded at an earlier stage were entered into on terms of more or less equality, though at a later stage the rulers were reduced to a status of inferiority ; e. g., the treaty made with the Nizam of Hyderabad. It should be noted that these treaties differed greatly from those concluded between members of the Western State-system ; they ceded several elements of sovereignty whereas the latter rarely did so. While the treaties between free and independent states are generally made with a view to the settlement of some past question or existing problem, those concluded between the East India Company and the Indian Princes usually created a new situation and bound the latter in regard to their future conduct.

Another important point in regard to the relationship between the Company's government and the Indian Chiefs during this period deserves to be noted. Besides the rights vested in the Company and the obligations on the part of the Princes created by the system, there arose a body of precedents relating to succession and to interference in the internal administration of the States which had no 'sanction but that of 'superior power on the one side and reluctant acquiescence on the other.' The result of the growing power of the Company and of the acquiescence of the States in those precedents was to transform the relation from that of alliance to that of suzerainty, and from that of union and cooperation to that of para-

mountcy. The relationships summed up in the word *paramountcy* had begun to develop even during the rule of the Company; it became established after the transference of the governance of India from the Company to the Crown in 1858, more particularly after the assumption of the title of Empress by Queen Victoria in 1876. Its effect was to change the Indian princes who were *de facto* sovereigns but *de jure* dependents in the eighteenth century into '*de facto* dependents though possessing treaties many of which recognised them as *de jure* sovereigns.'

**The Crown and the States.**— With the assumption of the responsibility for the administration of Indian affairs by the Crown, the policy of the Indian Government towards the States underwent a radical change in one respect. The very valuable help rendered by the rulers of States like Patiala, Jind and Nabha in the Punjab, Gwalior in Central India, and Hyderabad in the Deccan, made the British statesmen realise that the States could be bulwarks of British rule in the country. Lord Canning admitted their role as 'breakwaters in the storm which would have swept over us in one great wave'. The old policy of annexation, so vigorously pursued by Lord Dalhousie, was abandoned; in its place the policy of guaranteeing their existence, rights and dignity was proclaimed by Queen Victoria in her Proclamation of 1858. We may again quote the words of the Proclamation :

'We desire no extension of our present territorial possessions; and while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others. We shall respect the rights, dignity and honour of Native Princes as our own; and we desire that they as well as our own subjects should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government.'

As stated above, the decision not to extend 'our present territorial possessions' and to 'respect the rights, dignity and honour of Native Princes as our own' was a momentous one. It meant that the States were to become an integral part of the Indian system for all time to come, that they could not be thought of as temporary entities to be gradually extinguished. Two steps were taken to implement the pledge given by Queen Victoria. A number of Sanads were issued by the Governor-General informing the Hindu chiefs that they could adopt sons in the absence of natural heirs,

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\* Cambridge History of India, Vol. VI, page 492.

and the Muslim rulers that succession which would be in accordance with Muslim law would be upheld. In this way the Doctrine of Lapse which led to the annexation of Jhansi, Satara, Nagpur, Sambalpur and other States by Lord Dalhousie was abandoned. The second step was the *en bloc* confirmation of the treaties which the Company had made with the various Princes. This *en bloc* acceptance of the old treaties by the Crown and the pledge to respect them had one bad result. It meant the continuation of all the ambiguities and anomalies which should have been removed. The transference of responsibility for the governance of India to the Crown provided an excellent opportunity for the definition of the terms of the treaties which was missed. The result was 'plunging yet deeper into the embarrassment arising from the inexperience of early negotiators and the looseness of oriental political terms.\*

**Paramountcy**— But the pledge to observe the treaties and respect the rights and dignity of the Princes did not save the latter from becoming more and more dependent on the paramount power which began to assert rights and prerogatives which sometimes cut across treaty rights and which were never claimed by the East India Company. One of them was the right of recognising succession even in the case of natural heirs. In a letter written by the Government of India to the Chief Commissioner of the Central Provinces in 1884 it was asserted that the succession to 'a native State is invalid until it receives in some form the sanction of British authority'. In case of a disputed succession it was the right and duty of the paramount power to settle the question. This meant that the ruler of a State did not inherit the throne as a matter of right; it was something in the nature of a gift from the paramount power. It bound the rulers all the more closely to the British Government. It may also be mentioned that the right to assume guardianship of minor rulers and making regency arrangements devolved upon the paramount power as a natural corollary of the right stated above.

In the next place, the paramount power began to claim the right of interfering in the internal administration of States in serious cases of maladministration. While assuring the Princes that so long as they remained loyal to the Crown and faithfully discharged their obligations in terms of the treaties, no harm could come to

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\* Dodwell in *Cambridge History of India*, Vol. VI, page 492.

them, Lord Canning made it clear that nothing would debar the Government of India 'from stepping in to right such serious abuses in a native Government as may threaten any part of the country with anarchy or disturbances, nor from assuming temporary charge of a native State when there will be sufficient reason to do so.' A little earlier Lord Canning had declared in 1858 as follows: 'The Crown of England stands forth as the unquestioned ruler and paramount power in all India ..... There is a reality in the suzerainty of England which has never existed before and which is not only felt but is eagerly acknowledged by the Chiefs.'

In the course of his speech at Udaipur delivered in November, 1909, Lord Minto described the relations between the Paramount Power and the Indian States in the following words :

'Our policy is with rare exceptions one of non-interference in the internal affairs of Native States. But in guaranteeing their internal independence and in undertaking their protection against external aggression, it naturally follows that the Imperial Government has assumed a certain degree of responsibility for the general soundness of their administration, and could not consent to incur the reproach of being an indirect instrument of mis rule. There are also certain matters in which it is necessary for the Government of India to safeguard the interests of the community as a whole, as well as those of the paramount power, such as railways, telegraphs and other sources of an imperial character. But the relationship of the Supreme Government to the State is one of suzerainty.'

The most emphatic statement of the claim of the Crown to suzerainty over the Indian States is found in the letter addressed by Lord Reading to the Nizam of Hyderabad in March, 1927, in reply to the latter's claim as to complete freedom in respect of the internal affairs of his State as that enjoyed by the British Government of British India. Repudiating the claim of the Nizam to stand on the same footing as the British Government in respect of internal affairs, the noble Lord wrote as under :

'The sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India .....

'The right of the British Government to intervene in the internal affairs of Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown ..... But the internal, no less than the external,

security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government, and where imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government, it is with the Paramount Power that the ultimate responsibility of taking remedial action must lie. The varying degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility.\*

From these extracts it is clear that as conceived by Lords Canning, Minto and Reading, Paramountcy did not rest upon any contractual relationship but was 'shaped by circumstances and policy'; it was 'a mixture of history, theory, and modern fact'. It is very hard to define the term ; even the Butler Committee found it a tough task to define its scope and implications and could say nothing more than that Paramountcy must remain paramount, which means that it must be free to adapt its behaviour and attitude according to the shifting necessities of time and the development of the States. We may accept Pannikar's description of it as 'the complex of Crown rights, both general and particular, which limit the sovereignty of the States'. Two aspects of it may be distinguished : one *basic* and the other *particular*. In its basic or general aspect it applied to all the States, from the largest to the smallest, and covered the right of the paramount power to regulate and control the foreign relations and policies of the States and intervene in their internal administration in the interests of the States themselves, in those of India as a whole, and finally in the interests of the British Empire.

In the sphere of foreign relations the Indian Rulers had absolutely no say. They were forbidden to have any diplomatic relations or official contact with any foreign power, declare war or make peace with it, or even receive any foreign title or decoration. One may say that they had no foreign relations at all. Nay, the Indian Princes could not have diplomatic dealings with one another even. The policy of keeping them in strict isolation from each other and from the rest of India was rigidly enforced. When the subject of an Indian State wanted to go abroad, he had to apply to the Government of British India for passport which assumed the responsibility for his protection while abroad. In a word, for external purposes the whole map of India was coloured red ; the yellow part did not exist at all.

\* Quoted from Bannerji : *Indian Constitutional Documents*, Vol. II, pages 458-60.

In regard to their internal administration the States were free in theory to manage them as they pleased ; according to the treaties concluded between them and the Government of the East India Company the latter disclaimed interference ; they could make whatever laws they liked, levied and collected taxes as they chose, and spent the revenues without any let or hindrance from any one. But with the assumption of sovereignty by the Crown the Government of India began to make serious inroads in this sphere, and the Princes had no option but to acquiesce in their demands. We have already quoted extracts from the speeches of Lords Canning, Minto and Reading. The Government claimed the right to recognise and decide succession to the State *gaddi* in cases of dispute, sanction adoption, decide disputes between States, suppress internal rebellion, prevent gross misrule, check inhuman practices, offences against natural law and public morality, and the right to secure religious toleration, in the interest of the States themselves. The right to intervene to secure jurisdiction over British subjects, to protect the coinage of British India, and the right to assistance in the proper working of the judicial system were claimed in the interests of India as a whole. The right to acquire land for the construction of railways, aerodromes, and the establishment of cantonments and the right to the monopoly of telegraph service, and the manufacture of salt and sale of arms were claimed in the interest of the Empire.

After the assumption of responsibility for the governance of India by the Crown interference in the internal administration of Indian States took in many cases the extreme form of forcible abdication of the ruler for gross misrule. When the Rajput nobles of Alwar State rose in rebellion against the Maharaja because of his decision to marry a Muslim lady, the British authorities sided with the rebels who set up a council of regency. At a later date when the Maharaja again provoked a rebellion against his authority, the Governor-General appointed a board of management which superseded the authority of the Raja. All this was done in spite of the treaty of 1803 which bound the Company not to interfere with the internal affairs of the States. In 1865 the Raja of Jabwa was fined Rs. 10,000 ; in 1867 the Nawab of Tonk was deposed, and in 1892 the Khan of Kalat was compelled to resign for having executed five women and a man and mutilated two other men in a most brutal

manner for having committed a theft in his treasury. In 1875 Malhar Rao Gaekwar of Baroda was deposed for gross misrule. In the recent past action was taken against the rulers of Nabha, Alwar and Indore, all of whom were forced to abdicate.

There was a more subtle way in which the British Government exercised a comprehensive, though unwritten, authority in the States. It was done through the Residents or Political Agents who were posted in a large number of States. In the smaller States they 'frankly adopted the attitude of a superior towards a subordinate. Even in the case of bigger States and the States which had well known administrators they had much their own way. Dissensions and jealousies among the rulers were systematically sustained.\* Bearing all these facts in mind there would be no exaggeration in saying that the interference of the Paramount Power in the internal affairs of the States was 'comprehensive and pervading'.

Besides the general or basic aspect of Paramountcy which applied to all the States there was also a particular aspect of it whose application varied from State to State. The treaties concluded with some States empowered the Government to intervene in the quarrels between the ruler and his feudatory nobles. The *sanad* granted to the Maharaja of Patiala bound him to suppress infanticide, suttee and slave-driving in his territories. In some States the appointment of the Diwan or the Chief Minister required the approval of the Government. In a number of States the exercise of the power of inflicting capital punishment was subject to the approval of the Paramount Power.

**Machinery of Control over the States.**— The Government of India maintained a special department called the Political Department for dealing with the States. The Governor General himself presided over this department. It conducted the relations with the States through a large number of officials known as Political Officers, who formed the sole channel of communication between the States and the Government of British India. All the political officers were not of the same rank or status. In important States like Kashmir, Hyderabad, Mysore and Baroda, he was known as the Resident. Smaller States were grouped into ten different Agencies. The Rajputana Agency, the Central India Agency, the Punjab States

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\* V. P. Menon : *op. cit.*, page 11.

Agency, the Western India States Agency, the Madras States Agency were some of them. Each Agency had a political officer, formerly called the Agent, but latterly the Resident, who acted for all the States included in it. The Resident had a number of local residents or political agents in the various subdivisions into which the Agency was divided. Besides acting as the channel of communication between the States and the Government of India they advised the chiefs in matters of state administration. No important event could take place, not even a matrimonial alliance, without the approval of the local resident. No Indian ever held the post of a political officer in a State.

The question naturally arises: How was it that the Indian Princes submitted to the comprehensive and pervading control exercised over them by the Paramount Power? The answer is that they acquiesced in it as the price they had to pay for the right of exercising despotic and autocratic sway over their subjects. The fact cannot be denied that medieval autocracy prevailed in the States chiefly because their rulers had the support of the Paramount Power in their attempts to crush opposition to their despotism. The Princes knew that so long as they were prepared to submit to occasional surveillance to the British Government they could carry on in the old ways, provided their misrule did not become intolerable.

**The Montford Report on the Indian States.**-- Mr. Montague and Lord Chelmsford conducted an investigation into the relations of the States with the Paramount Power and with British India and published their views in the Report. They observed that the events happening in British India could not be a matter of indifference to the Princes, because 'hopes and aspirations were apt to overleap frontiers like sparks across a street', and indirectly suggested that they should introduce reforms in their States. 'Looking ahead to the future, the authors of the Report pictured India as presenting only the external semblance of some form of federation. They visualised that the provinces would ultimately become self-governing units, held together by a Central Government which would deal solely with matters of common concern to all of them. But the matters common to the provinces were also to a great extent those in which the States were interested; namely, defence, tariffs, exchange, opium, salt, railways, and posts and telegraphs. The gradu-

al concentration of the Government of India upon such matters would therefore make it easier for the States, while retaining their autonomy, to enter into closer association with the Central Government if they wished to do so.\*

In view of the fact that the conditions under which many of the treaties were negotiated had undergone material changes, the authors of the Report suggested that the time had come for a review of the situation, with the consent of the parties concerned, 'not necessarily with a view to any change of policy, but in order to simplify, standardise, and codify existing practice for the future.' This recommendation gave rise to a good deal of controversy and discussion among the rulers, some being in favour of it and some against. The outcome of the discussion was the adoption of a procedure which enabled the States to have direct relations with the Government of India and gave them an opportunity to express their views in regard to the framing of a practice having a bearing on their prerogatives.

The second important recommendation of the Montford Report was that the isolation in which the Princes stood should be ended and that steps should be taken to give them opportunities for joint consultations and discussions in matters of common interests. The result was the establishment of the Chamber of Princes which was brought into being by a Royal Proclamation on February 8, 1921.

**The Chamber of Princes.**— The Chamber of Princes or Narendra Mandal, as originally constituted, consisted of 108 ruling Princes who were to be members in their own right and 12 other Princes who were to be elected by 127 non-salute States which were not included in the first group. The first group included States whose rulers were entitled to a permanent dynastic salute of eleven or more guns and such other States as were qualified for its membership in the opinion of the Viceroy. The rest of the States were not represented in the Chamber. The number of States in the first group was subsequently raised to 135, and that of the States in the second group which were represented in the Chamber by election and not in their own right was reduced to 108. The Viceroy was its *ex-officio* President. His business was to approve its agenda. Nothing could be included in the agenda without his previous

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\* Menon : *op. cit.*, page 14.

consent. Among other office-bearers of the Chamber were the Chancellor and the Pro-Chancellor. It also had a Standing Committee consisting of the Chancellor, the Pro-Chancellor, and four or five other members. The Chamber used to meet once a year, but its Standing Committee met twice, thrice or even oftener. The functions of the Chamber were to advise the Viceroy on all questions referred to it, and to propose other questions affecting the States. The Royal Proclamation described its functions in the following words :—

‘My Viceroy will take counsel freely in matters relating to the territories of the Indian States generally, and in matters which affect those territories jointly with British India or with the rest of my Empire. It will have no concern with the affairs of individual States or their Rulers or with the relations of individual States to my Government, while the existing system of the States and their freedom of action will be in no way impaired.’

The Chamber was a consultative or advisory body; it had no executive or administrative functions. It was precluded from discussing the affairs of individual states and their rights and privileges. It passed through many vicissitudes arising mainly from the conflict of interests between larger and smaller States. For a time many of the major States kept themselves away from it. At a later stage its Standing Committee was reorganised and came to consist of 35 members of whom 18 held permanent or semi-permanent seats. After 1929 the meetings of the Chamber were thrown open to the Press.

**The Butler Committee on Paramountcy.**— The phrases employed and the doctrines enunciated by Lord Reading in his letter to the Nizam (extracts from which have been given above on page 523) caused a good deal of commotion in the princely circle. The Princes who attended the conference called by the Viceroy at Simla in May, 1927, asked for an impartial inquiry into the whole relationship between the Princes and the Paramount Power. The Secretary of State appointed a Committee in December, 1927, headed by Sir Harcourt Butler to inquire into the problem and suggest a satisfactory adjustment of the existing economic relations between the States and British India.

The Princes engaged some eminent British constitutional lawyers, headed by Sir Leslie Scott, to argue their case. The lawyers

pleaded their case with great skill and argued that paramountcy gave the British Government rights only in the sphere of foreign relations and internal security, but none to interfere in the internal administration of the States. The treaties gave no general discretionary right to the paramount power to interfere in the internal sovereignty of the States. The Butler Committee rejected this plea and held that paramountcy 'was not merely a contractual relationship resting on treaties made more than a century ago but that it was a living, growing relationship shaped by circumstances and policy, resting on a mixture of history, theory and modern fact. It was not historically correct to assume that when the States came into contact with the British power they were independent, each possessed of full sovereignty and of a status which a modern international lawyer would hold to be governed by rules of international law.' It asserted that 'paramountcy must remain paramount and fulfil its obligations, defining or adapting itself according to the shifting necessities of the time and the progressive development of the States.'\*

The findings of the Butler Committee thus went against the Princes on the point; they could not free themselves from the unfettered discretion of the Political Department to intervene in their internal affairs. But in regard to another point they scored success. It was argued on their behalf that Paramountcy gave to the Crown definite rights in relation to the States and imposed certain obligations on it. It was to the Crown and not to the Government of British India that they had entrusted their foreign relations and external and internal security, and that it was to the Crown that the Princes owed loyalty and allegiance. This loyalty and allegiance could not be transferred to a third party like an Indian government responsible to the legislature. The Butler Committee agreed with this view. It stated its opinion in the following words:

'If any government in the nature of a Dominion Government should be constituted in British India, such a government would clearly be a new government resting on a new and written constitution. This contingency has not arisen..... We feel bound, however, to draw attention to the really grave apprehension of the princes on this score and to record our strong opinion that, in view of the fact of the historical nature of the relationship between the paramount power and the princes, the latter should not be transferred without their agreement to a relationship with a new government in British India responsible to an Indian legislature.'

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\* Menon : *op. cit.*, page 23.

It was in pursuance of the view laid down in the above extract that Paramountcy was kept out of the purview of the federal government under the Government of India Act of 1935. When the British transferred power to the representatives of the Indian people in 1947 paramountcy lapsed; it was not passed on to the successor Indian Governments. The story of the way in which the popular Indian Government dealt with the problem of Indian States shall be told later on. Here we would briefly refer to the fact that the federal scheme as set forth in the Act of 1935 could not be put into operation because a sufficient number of Indian States did not agree to accede to the Federation. The terms on which accession could have been effected could not be agreed to between the Crown and the States. It may also be mentioned in the end that henceforth the relations with the Indian States were conducted by the Viceroy on behalf of the Crown and not by the Governor General.

**Administration in the States.**— So far we have been concerned with the development and definition of paramountcy; it is time that we turned to another problem; namely, that of administration in the States. It is very difficult to give any general account of the methods of administration prevalent in them because they did not possess any uniform system comparable to that existing in British India. The powers and authority enjoyed by the Princes were not the same in all cases; they revealed almost all gradations from full autonomy to a mere show of authority. Besides the uniform dependence on the paramount power for their very existence, the States had only one feature in common, namely, the monarchical system of government. All power vested in the hands of the ruler who exercised it in a more or less despotic way. It was only in the case of Aundh that democracy was written in the constitution.

In some of the important States absolutism was sought to be tempered by a show of reforms. The rulers had learnt from their British mentors that legislative assemblies and councils of ministers could be introduced while keeping full power in their own hands. Some of them established legislative bodies and vested in them the right to criticise the state budget and administration, but did not give them any power to control the executive. The council of ministers, wherever appointed, were mere advisory bodies, responsible to the rulers themselves; they had no popular character. It was only in

Kashmir and Mysore that two of the ministers were selected by the rulers from among the elected members of the State Assembly ..... The progress of reforms of this type was very slow.

**Movement for Responsible Government in the States.—** Political forces know no political frontiers ; the political awakening stimulated by the Congress and intensified by the War crossed the boundaries of British India and began to flow in the territories of the Indian States. Their subjects also began to demand civil liberties and the introduction of responsible government. Praja Mandals were formed in several States which put forth the demand for representative institutions. There were political disturbances in Mysore, Travancore, Kashmir, Hyderabad, Jaipur, Rajkot and other States which were put down by the rulers with the help of the Paramount Power. The Congress sympathised with the political aspirations of the States' peoples, but made it clear to them that the burden of carrying on the struggle for responsible government must be borne by them ; it could offer them only moral support and sympathy. In 1938 a States' Peoples Conference was organised under the presidentship of Pandit Jawahar Lal Nehru. The result was that some steps in the direction of establishing representative institutions were taken in some of the States and some powers were conceded to them. Realising that unless the Princes introduced some radical reforms in the States, it was a question of time before they succumbed to the popular agitation, Lord Linlithgow thought that it was time for the British Government to give up their traditional policy of non-interference in the internal administration of the States and bring pressure upon the rulers to effect administrative reforms by limiting their privy purses, removing obsolete imposts, maintaining the finances on a stable basis, improving the quality of their officials, etc. On the constitutional side he thought that the Princes should establish representative institutions and introduce constitutional government in their territories. Since the smaller States, whose number was quite large, could not bear the cost of introducing democratic institutions single-handedly, Lord Linlithgow suggested that they should organise themselves into unions and introduce democratic set up in the unions as separate units. The Secretary of State agreed with the views of Lord Linlithgow, but held that the initiative must rest with the rulers themselves. Meanwhile the

World War broke out, and the two problems of inducing the Princes to join the all-India Federation and to introduce constitutional and administrative reforms were put in cold storage.

**The States and the Cripps Mission.**— During the war the Princes gave unstinted support to the Government and placed all their resources at its disposal in the prosecution of the war effort. In return the grateful British Government remembered them while sending out Sir Stafford Cripps to India with their proposals for the settlement of the Indian question. The Cripps Proposals included the following two short paragraphs:

(i) 'Whether or not an Indian State elects to adhere to the Constitution, it would be necessary to negotiate revision of its treaty arrangements so far as this may be required in the new situation.'

(ii) 'Indian States shall be invited to appoint representatives in the same proportion as to their populations, as in the case of representatives of British India as a whole, and with the same powers as British Indian members.'

The vital right which the Cripps proposals conceded to every State was that of declining to adhere to the new constitution to be framed by the constituent body, and to maintain its separate entity. The Princes sought clarification on several points, of which the following two are worth noting: (i) Whether the States not joining the Union would be allowed to form a union of their own with full sovereign status? (ii) Whether the Crown would continue its obligations towards States which do not join the Union and enforce them through usual sanctions? In short, they wanted to know whether it would be possible for them to keep out of the proposed Union and yet enjoy the protection of the Crown in maintaining their autocratic sway over their subjects. Sir Stafford Cripps told them that every thing depended upon the nature of the arrangements to be made subsequently, but assured them that paramountcy would not be transferred to any other party and the treaties would not be revised without their consent.

It is interesting to learn that the Princes did not at all like the suggestion incidentally thrown out by Cripps that the Princes would be well advised to establish an effective machinery in their States for ventilating the legitimate grievances of the people. The Chancellor of the Chamber of Princes regarded this advice as inconsistent with the declaration made on behalf of His Majesty's Government

that the decision as to what constitution was best suited to the needs of the people rested with the Princes.

The failure of Sir Stafford Cripps to give satisfactory answers to the two questions noted above made the Princes feel that in case the interests of British India came into conflict with those of the States, the British Government would not hesitate to let them down. Therefore they began to devise ways and means to protect their own position and to get an assurance from His Majesty's Government that their interests would not be sacrificed at the altar of British Indian interests.

**Lord Wavell's Advice.**— Before describing the proposals made by the Cabinet Mission in regard to the role of the States in the making of a future constitution we may add a few words about the advice given by Lord Wavell to the Princes in his address to the Chamber of Princes on January 17, 1946. While assuring the Princes that no changes in the relationship to the Crown would be made without their consent, he impressed upon them the necessity of improving their administration and associating their subjects with it. He advised the smaller States to pool their resources and form political entities of a sufficient size.

**The Cabinet Mission and the States.**— The Cabinet Mission invited the Indian Princes to participate in the discussion for setting up the machinery for framing the constitution for a free India inclusive of British Indian Provinces and the Indian States. They interviewed the Chancellor of the Chamber of Princes; the rulers of Patiala, Bikaner, and Nawanagar jointly as representing the middle sized States; and the rulers of Dungarpur and Bilaspur jointly as the representatives of the smaller States. They also interviewed the representatives of the rulers of Hyderabad (Nawab of Chattari), Travancore (Sir C. P. Ramaswami Aiyar), and Jaipur (Sir Mirza Ismail). In their interviews with the Mission the representatives of the Princes were guided by the one dominant idea of preserving the maximum degree of the sovereignty of the States. They disliked the idea that British India should interfere in their internal administration. They desired that paramountcy should remain with the Crown. The Chancellor, the Nawab of Bhopal, toyed with the idea of making the Princes a third force in Indian politics. The Mission threw cold water on all these aspirations by declaring that with the

establishment of a new government the paramountcy of the Crown would end ; the rights of the States which flowed from their relationship to the Crown would cease to exist and the rights surrendered by the States to the Crown would return to them. In a Memorandum released to the press on May 22, the Mission said :

'They (the States) will undoubtedly strengthen their position by doing everything possible to ensure that their administrations conform to the highest standards. Where adequate standards cannot be achieved within existing resources of the State, they will no doubt arrange in suitable cases to form or join administrative units large enough to enable them to be fitted into the constitutional structure. It will also strengthen the position of States if the various governments take active steps to place themselves in close and constant touch with public opinion in their States by means of representative institutions ..... When a new fully self-governing or independent Government or Governments come into being in British India, His Majesty's Government's influence with these Governments will not be such as to enable them to carry out the obligations of Paramountcy. Moreover, they cannot contemplate that the British troops will be retained in India for this purpose. Thus in logical sequence and in view of the desire expressed to them on behalf of the Indian States His Majesty's Government will cease to exercise the rights of paramountcy. This means that the rights of the States which flow from their relationship with the Crown will no longer exist and that all the rights surrendered by the States to the Paramount Power will return to the States. Political arrangements between the States on one side and the British Crown and British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the successor Government or Governments in British India or failing that, entering into particular political arrangements with it or them.'

The Nawab of Bhopal, Chancellor of the Chamber of Princes, sought clarification on some points. He hoped that the new defence arrangements to be made by the new Government of India would not in any way affect the right of the States to maintain their own armed forces. Lord Wavell replied by saying that most of the matters covered by him raised questions which could be settled by negotiations between the representatives of the States and the British Indian members of the Constituent Assembly ; their settlement did not rest with him or with the Cabinet Mission. Very naturally the Chancellor found this reply most disappointing.

As has been stated elsewhere, the Cabinet Mission plan did not succeed in bringing the Congress and the League together in one Constituent Assembly. The decision to divide India was taken. Prime Minister Attlee declared in the House of Commons that with

the transfer of power to the governments of the new Dominions paramountcy would cease, the treaties and agreements concluded between the States and the Crown would end, and the States become independent. He added that the termination of the existing relationship between the Crown and States need not mean that the latter were to become islands cut off from the rest of India ; he expected them to join the one or the other Dominion. The Indian Independence Act of 1947 also contained a clause providing for the termination of the suzerainty of the Crown over the Indian States. Along with the termination of the suzerainty, all the powers, authority and jurisdiction flowing from that suzerainty were also to cease to be exercisable.

**The Lapse of Paramountcy and After.**— The decision of His Majesty's Government that with the transfer of power to the people of India paramountcy would cease was a most unfortunate one ; it was interpreted by some of the rulers to imply that they would become independent, and could decline to join any of the two Dominions which were to come into existence. On the 11th of June Sir C. P. Ramaswami Aiyar announced that Travancore had decided to set itself up as an independent sovereign state. The Nizam made a similar statement the next day. The Nawab of Bhopal, in his letter resigning the Chancellorship of the Chamber of Princes, had said that he would assume an independent status as soon as paramountcy lapsed. These declarations gave rise to the apprehension that other States might follow the same path. The All India Congress Committee protested against this, which meant the 'Balkanisation' of the country ; it held that the lapse of paramountcy could not be taken to imply the independence of any State. Jinnah took the other view and held that legally and technically the termination of paramountcy gave every State the right to declare its independence, if it so chose. The situation was thus a grave one ; there was a danger to the integrity of the country ; there was the genuine fear that the ship of Indian freedom might founder on the rock of the States' independence. Some British administrators 'who had lived in India for a life-time were convinced till the last moment that the Princes would not submit themselves to the authority of democratic leaders and, as they had their own armies, they would resist any encroachments on their power, leading to certain civil war in which the structure of new India may perish.'\*

\**Chanakya : The Indian Revolution*, page 123.

Shri V. P. Menon has described in a graphic way how the States Department was created with Sardar Vallabhbhai Patel as the Minister and himself as its Secretary to replace the Political Department which was winding itself up, and how Lord Mountbatten was asked to solve the crisis by inducing the Indian States to accede to the appropriate Dominion in regard to defence, external affairs, and communications. He told the Princes that accession on these three subjects left the rulers with all the practical independence that they could possibly use and made them free of those subjects which they could not possibly manage on their own. He assured them that their accession on these subjects would involve no financial liability and that in other matters there would be no encroachment on their sovereignty. He made it clear that though the rulers were technically at liberty to link with either of the Dominions, there were certain geographical compulsions which could not be evaded. Out of something like 565 States, the vast majority are irretrievably linked geographically with the Dominion of India.\* Lord Mountbatten concluded his highly persuasive and cogent appeal with the following words : 'You cannot run away from the Dominion Government which is your neighbour any more than you can run away from the subjects for whose welfare you are responsible.'

**Accession of States to the Indian Union.**—Partly as a result of the 'infectious charm and inborn tact of Lord Mountbatten' and the earnest way in which he threw himself into this problem, partly on account of the masterly handling of the rulers by Sardar Patel and the great tact and sagacity with which he managed the affairs of the newly created States Department, and partly due to the wise, noble and patriotic lead given to the Princes by the Maharaja of Bikaner, the Maharaja of Patiala, the Gaekwad of Baroda, and the Scindia of Gwalior, the problem of accession of the States was solved within the incredibly short period of two months which Lord Linlithgow could not solve in three years' time. All the States which were geographically linked with India with the exception of Junagarh, Hyderabad, and Kashmir announced their accession to India. The threatened Balkanisation of the country which had been predicted by pessimists and anticipated by the enemies of Indian freedom was thus averted ; the

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\* Menon : *op. cit.*, page 108.

whole of the country with the exception of Junagarh, Hyderabad, and Kashmir came under one political umbrella. According to Shri V. P. Menon India can never forget the magnificent service 'rendered by Lord Mountbatten at this most critical juncture in our history'. Nor can 'one forget the rulers but for whose willing and patriotic cooperation the policy of accession could not have been implemented'. Since, in the words of Menon, the masterly handling of the rulers by Sardar Patel was 'the foremost factor' in the successful implementation of the policy of accession, a few words about the policy pursued by him deserve to be added.

**The Policy of Sardar Patel.**— Immediately on taking over charge of the newly formed department of States Ministry in the Government of India Sardar Vallabhbhai Patel issued a historic statement in which he outlined the policy the Government of India wanted to adopt in regard to the States. He reminded the Princes that in the past India succumbed to foreign invaders because of her politically fragmented condition and the consequent inability of the Indians to offer a united stand to them. He said: 'Our mutual conflicts and internecine quarrels and jealousy have in the past been the cause of our downfall and of our falling victims to foreign domination a number of times. We cannot afford to fall into those errors and traps again.' He therefore appealed for unity and mutual co-operation between the different parts of the country for the safety and preservation of the States as well as of India. He assured the Princes that it was no part of the policy of the Government of India to assume paramountcy over the States in any shape or form, but added that the Government would not allow vacuum or anarchy in any part. Speaking in the Constituent Assembly on December 9, 1947, he said: 'Paramountcy is dead and gone and nobody laments or mourns it. There is no reason, however, to think that because paramountcy has disappeared, there is going to be no power in India. The Government of India proposes to function as a government, and would not leave a vacuum or anarchy in any part of India whatever happens.' He evolved a formula for the accession of the States to the Indian Union which, on the one side, allayed the fears and suspicions of the Princes by conceding to them the substance of their ancestral privileges, and on the other side, enabled them to cast their lot with the rest of the country for their own good and the good of all.

**Response of the Princes.**— The credit of giving a patriotic lead to the Princes and convincing them that it was in their own interest to accede to India goes to Maharaja Sir Sadul Singh of Bikaner and Maharaja Sir Yadavindra Singh of Patiala. The Jam Sahab of Nawanagar was also a great force. The Nawab of Bhopal, the Maharaja of Indore, the Maharaja of Travancore, the Maharajas of Jodhpur and Jaisalmer were among the chief rulers who adopted a hostile attitude in the beginning. The first three entertained the thought of declaring independence, and the last two were hobnobbing with Jinnah. But ultimately all of them came round and acceded to India before August 15. The only States which failed to do so were Junagarh whose Muslim Nawab acceded to Pakistan after having given unmistakable indications of his intention to accede to India, and Hyderabad and Kashmir. Their accession was accomplished at a later date. The conditions under which it took place are described below.

**Junagarh.**— When the people of Junagarh, a great majority of whom were Hindus and wanted accession to India, came to know that, contrary to his promise and intention, the Nawab had acceded to Pakistan, they rose against him and established a Government of their own under Samaldas Gandhi. The Nawab fled to Karachi, leaving the administration in the hands of his Prime Minister, Sir Shah Nawaz Bhutto. Finding that the situation was getting out of his hands and with a view to avoiding bloodshed, hardship and suffering to the people of the State, he opened negotiations for accession to India which was accomplished on November 9, 1947. Readers desirous of going into the details of this interesting episode may please refer to Shri V. P. Menon's volume, *The Integration of the Indian States*.

**Hyderabad.**— Hyderabad was the premier Muslim State of India, holding a pivotal position in the heart of the country. About 80 % of its population consisted of Hindus. It would be recalled that Hyderabad was one of the three or four States whose rulers had declared their intention to set themselves up as independent sovereigns having no organic relationship with the Indian Dominion after the announcement of His Majesty's Government plan of June 3, 1947. It was the ambition of the Nizam to secure Dominion Status for his State on the withdrawal of the British power and to

become a member of the British Commonwealth of Nations. He therefore did not send any representatives to the Constituent Assembly sitting at Delhi.

On July 11, the Nizam sent a delegation to Delhi to meet Lord Mountbatten and discuss with him the rendition of Berar, the grant of Dominion Status to Hyderabad, and the question of accession to India. With regard to the question of Dominion Status for Hyderabad the Governor General informed the delegation that the only way in which a State could become a member of the Commonwealth was through joining either India or Pakistan. His Majesty's Government were not prepared to agree to its coming in as an independent member. Lord Mountbatten tried to impress upon the delegation the necessity and advantage of Hyderabad acceding to India. The delegation pointed out that the Nizam was not agreeable to the course as it compromised his sovereignty. It wanted the Government of India to enter into a Standstill Agreement with Hyderabad without the latter's accession, a course for which the Government of India were not at all prepared. There were other difficulties also. Since it was found impossible to persuade Hyderabad to accede before the 15th of August, Lord Mountbatten was requested to continue negotiations with the Nizam for another two months with a view to securing his accession.

After many a visit of the Hyderabad delegation to Delhi an understanding was arrived at according to which the Government of India were prepared to conclude a Standstill Agreement with the Nizam if the latter was willing to concede the substance of accession without formally signing the Instrument of Accession in the form in which it had been accepted by all the other States. It was a great concession made by the Government of India for the sake of a peaceful settlement with the Nizam. The Nizam consulted his Executive Council which advised him to accept the agreement by a majority decision. The Nizam formally approved the decision of the Executive Council but deferred signing the agreement till the next day. Meanwhile, Kasim Razvi stirred up some trouble in the capital and prevailed upon the Nizam to send a fresh delegation to Delhi to reopen negotiations with the Government of India for accepting the original proposals made on behalf of the State which the Indian Government had already rejected. Kasim Razvi argued

that in view of the trouble which had been started in Kashmir the Government of India might not be in a position to turn down Hyderabad demands if they insisted. In a letter to Lord Mountbatten the Nizam threatened to accede to Pakistan if the Government of India did not conclude a Standstill Agreement with him. Lord Mountbatten took the leader of the delegation to task for the unstatesmanlike terms of the letter and told him that the failure of the Nizam to sign the agreement which had been approved by his Executive Council would cause just a minor inconvenience to India, but would prove to be an irretrievable disaster to the Nizam himself. The efforts of the delegation having proved abortive there was no option for the Nizam but to sign the two documents (the Standstill Agreement and the Agreement between the Government of India and himself), which had been earlier approved by his Executive Council. They were signed on November 29, 1947.

It seems that whereas the Government of India had entered into the Standstill Agreement and afforded differential treatment to Hyderabad in the hope that the step would ensure communal peace for one year at least, and Lord Mountbatten had expected that during this period heads would cool and hearts would soften and that the Nizam would accede to India like all the other rulers, the Nizam and his Razakar advisers regarded the Agreement 'as providing breathing space in which to secure the withdrawal of the Indian troops from Hyderabad and eventually to build up their position and strength to a stage when they would be able to assert the independence of the State.'\* The result was that hardly before the ink was dry on the Standstill Agreement, the Government of the Nizam issued two ordinances which clearly violated its terms. One of them placed restriction on the export of all precious metals to India and the other declared that Indian currency was not a legal tender in Hyderabad. In addition, it became known that the Nizam's Government had advanced a loan of Rs. 20 crores to Pakistan. As if these were not sufficient to give rise to a controversy between the Government of India and that of the Nizam, the activities of the Razakars, a militant group of Muslim volunteers, were intensified; their leader, Kasim Razvi, indulged in objectionable speeches which inflamed communal passion. Hindus began to flee the State in panic. The Hyderabad delegation visited Delhi

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\* Menon : *op. cit.*, page 337.

a number of times for discussions with the Government of India. In course of them the Government of India insisted upon Hyderabad's accession to India like other States. The Nizam was averse to accession; he was thinking in terms of a political accord between his Government and that of India. Another subject discussed at these meetings was the introduction of responsible government in the State. The Nizam and his advisers fought shy of it; they prepared schemes in which the small Muslim minority would constitute the ruling authority for a long time. Meanwhile the law and order situation was fast deteriorating in Hyderabad owing to the activities of the Razakars.

Lord Mountbatten tried his best to secure a settlement of the problem of accession but failed. The negotiations broke down on June 18, 1948, three days before his departure from India. They broke down because the Laik Ali ministry, which was completely under the control of the Razakars, agreed to neither accession nor to responsible government. The Nizam and his advisers thought that the Government of India, preoccupied as they were with the Kashmir problem, could not take any action against them. They were also encouraged by the anti-Indian attitude of a section of the British press.

After the breakdown of the negotiations, the situation worsened a great deal in Hyderabad. As a protest against a veritable reign of terror that prevailed in certain parts of the State where Brahmins were killed and their eyes taken out, women raped, property looted, and houses burnt, Shri J. V. Joshi, a member of the Nizam's Executive Council, resigned. The Razakars entered into an alliance with the communists and degradations began to be made into the Indian territory. There was a good deal of smuggling of guns into Hyderabad from Karachi by an Australian, Sidney Cotton by name. In addition to border raids by the Razakars and their allies, the communists, there were frequent attacks on trains passing through the Nizam's territory by the Razakars. The Nizam police would be present on the scene of action but would take no steps to protect the passengers. The Government of India drew the attention of the State government and asked the latter to ban the Razakars and protect the innocent citizens. They offered to send troops to Secunderabad to help the State authorities to restore law and

order and suppress the communists and the Razakars. But the Nizam, dominated as he was by Razakars, would not hear any such advice. After much deliberation the Government of India decided to send troops into Hyderabad to restore peace and tranquillity inside the State and create a sense of security in the adjoining Indian territory. It was expected that the Hyderabad forces would offer stiff resistance, but the operation lasted only 108 hours. The Hyderabad army surrendered on the evening of September 17, and the Laik Ali ministry tendered its resignation. On September 18, Major General Chaudhri took over charge as Military Governor. The leading Razakars were put under arrest. It is important to note that contrary to the fears entertained by a section of the public, there was no communal incident in the whole of the country during the military operations against Hyderabad.

The Nizam acceded to India and promised to be loyal to the Indian Union and work in closest collaboration with the Government of India. He was allowed to remain on the throne as a constitutional ruler, while the administration was in the hands of Major General Chaudhri assisted by some civil administrators. Many reforms were introduced and responsible government was established in the State in 1952.

**Kashmir.**— From Junagarh and Hyderabad we may turn to Kashmir which was ruled by a Hindu Maharaja but had a preponderance of Muslim population. In a way the problem of Kashmir was more complex and difficult than that of Junagarh and Hyderabad which were destined by geography to be parts of the Indian Union. The State of Jammu and Kashmir fell into four natural divisions: Jammu in the south, the valley of Kashmir in the centre, Gilgit in the north, and Ladakh in between Kashmir and Gilgit. The communications between the four parts were poorly developed. The road link with Kashmir lay through Pakistan territory. The rivers which carried timber from Kashmir forests flowed through Pakistan. It should also be remembered that Kashmir had international boundaries. To the east lay Tibet, to the north-east there was the Chinese province of Sinkiang, and on the north-west the frontiers touched those of Afghanistan. A few miles to the north lay the territories of U. S. S. R. It is this international character of Kashmir boundaries which complicated the issue of accession and

ranged some big foreign powers against India in the U. N. O.

Maharaja Sir Hari Singh was toying with the idea of making Jammu and Kashmir an independent and sovereign state. Lord Mountbatten spent four days at Srinagar, discussing the problem of accession with the Maharaja. He told the Maharaja that the British Government would not recognise Jammu and Kashmir as a Dominion. He further assured him that no trouble would arise if he acceded to either Dominion, that India would not take it amiss if he acceded to Pakistan. But the Maharaja could not make up his mind any way. He found it difficult to come to any conclusion. Accession to Pakistan would have displeased the residents of Jammu, a predominantly Hindu area, and the section of Kashmir Muslims led by Sheikh Abdulla. Accession to India would have been resented by the residents of Gilgit and other areas contiguous to Pakistan. In this predicament the Maharaja concluded a Standstill Agreement with Pakistan without acceding to it. Neither did he accede to India.

Pakistan began to employ pressure tactics to coerce the Maharaja into joining it. Supplies of food, petrol and other essential commodities were cut off, and the free transit of travellers between Kashmir and Pakistan was hindered. Hit and run raids into Kashmir territories were organised which rendered it necessary for the Kashmir ruler to deploy his armed forces over a 450 mile frontier. Frontier tribesmen, Afridis, Wazirs, Masuds, and soldiers of the Pakistan army on leave, led by some regular officers of the Pakistan army, made an all out invasion of Kashmir. The invasion began on October 22, 1947. A state battalion, consisting of Muslims and Dogras, was sent to resist the invaders. The Muslim soldiers deserted, shot dead their commander, and began to act as the advance guard of the invaders. The Maharaja had never thought of the possibility of an invasion of his territories by the tribesmen and of the desertions of the Muslims from his army and police. He was completely unnerved. In his desparate condition he sought the help of the India Government to meet and repel the invaders. The Indian Government replied by saying that they could come to the rescue of the State only if it acceded to India; they could not legally send their armed forces into the territory of a state not a part of India. The Maharaja signed the Instrument of Accession and sent it to the Govern-

ment of India. Sheikh Abdulla was in Delhi at the time when Mr. Menon brought the signed Instrument of Accession. He pressed the Government of India hard to accept the accession. The Government accepted the accession on the condition that a plebiscite would be held in the State when the law and order situation permitted. This decision had the fullest support of Sheikh Abdulla. This was on October 26. On October 27 Indian troops began to be airlifted to Srinagar. This airlifting was an astonishing performance for which Lord Mountbatten complimented all those engaged in it. He said that never in his war experience had he heard of an airlift of this nature being put into operation at such short notice. It is no part of our purpose to describe the heroic way in which the Indian troops fought the invaders and drove them back.

While the Indian troops were engaged in repelling the invaders, the Maharaja of Kashmir invited Sheikh Abdulla to form an interim emergency government which he did. In this way Kashmir acceded to India and got a government which could be regarded as popular.

Jinnah was greatly annoyed when he heard of Kashmir's accession to India and of Indian military help against the raiders. He gave orders to send Pakistan troops to Kashmir to fight the Indian army. But the acting Pakistan Commander-in-Chief, General Gracey, pointed out the difficulties inherent in the operation; the idea had reluctantly to be given up. Kashmir became a bone of contention between India and Pakistan. Lord Mountbatten tried his best to get a negotiated settlement, but did not succeed. At his suggestion the question was referred to the United Nations. It is still before the U. N., and has defied solution so far.

This brings to a close our narration of the superb way in which the most difficult problem of filling in the void created by the lapse of paramountcy was solved and the very serious and real danger of the Balkanisation of the country averted. It is indeed a glorious chapter in the constitutional development of the country. As a result of the accession of the States to the Union of India the whole country came under one political umbrella. There were, however, other problems, equally important and urgent, which demanded solution. They were created by the great multiplicity of the States and their great differences in size, population, income, etc., and the presence of more or less despotic rule in them. Let us see how

they were solved by Sardar Vallabhbhai Patel as the head of the Ministry of States.

**Merger and Integration.**— The Memorandum on Indian States published by the Government of British India put the number of Indian States at 601. The Butler Committee put it at 562. Sir Warner Lees in his book, *Native States of India*, spoke of 693 States. It does not matter much whether their number was 562, 601 or 693; it is sufficient for our purpose to note that it was very large. The States were not only numerous; they also differed vastly in size, population, etc. They ranged all the way from Hyderabad with an area of 82,700 sq. miles, a population of over 16½ millions, and an annual revenue of about ten crores of rupees, to Bilbarri with a few acres of land, a population of less than a hundred and an annual income of about a hundred rupees (in pre-war days). Of nearly 600 States only three had an area of over 50,000 sq. miles, and only four an area between 10,000 and 20,000 sq. miles. Nine had under 10,000 sq. miles; 69 under 1,000, and 168 under 168 sq. miles.

Large States like Hyderabad, Kashmir, and Mysore could exist and function as viable units of administration. It was, however, impossible to think of allowing small States, e. g., those of Kathiawad, and in Central India and Orissa, to function as distinct units. Kathiawar had 283 States of which 274 had a total revenue of 135 lakhs of rupees. Within the limits of this sum 274 ruling families had to be maintained and 274 separate and semi-independent administrations run. Obviously, this was too irrational and foolish a position to be maintained. Calculating in terms of the area covered by the 274 Kathiawar States and their total income, it could be said that it provided one State for every 25 sq. miles of territory and for every 500 heads of population. 'If the revenues of 171 of the smaller States are added up, they amount to Rs. 650,000 with an average of Rs. 3,813 as the annual revenue for every one of them. This meagre sum is supposed to meet the expenses of administration and other necessary functions of the state.' These figures should suffice to reveal the immense administrative difficulties arising out of the too great multiplicity of the Indian States. The only way out of them was to reduce their number by merging the small States with the neighbouring provinces or to unite them together into viable units. Both the processes were adopted according to local needs; a large number of them were

merged in the provinces and the remaining were integrated to form Unions. Thus most of the Gujurat States and some of the Deccan States were merged in Bombay, and those situated within the Madras Presidency were united with Madras. The States in C. P. and Orissa were merged in their respective provinces. The Kathiawar States were integrated to form the Union of Saurashtra ; those in the Punjab were formed into Pepsu (Patiala and the Eastern Punjab States Union) ; the Simla Hill States were united to form Himachal Pradesh ; Indore, Gwalior, and other Malwa States were combined into Madhya Bharat ; and the Bundelkhand States were constituted into Vindhya Pradesh. Bhopal, Tipura, and a few other States which could be neither merged in or integrated with other States remained as centrally administered areas and were placed in part C of the First Schedule of the Constitution. The effect of this process of merger and integration was that there remained only 15 States. It was a grand achievement to reduce their number from nearly 600 to only 15.

It is not necessary for us to describe how the merger and integration of the States were brought about. Readers interested in the details of the process may consult Menon's volume. We would only state that even before India became free, there was a strong feeling in the country that the existence of a large number of small States was both politically undesirable and economically impracticable. Mention of the views of Lord Linlithgow has already been made. A resolution was passed in 1939 at the Ludhiana session of the States Peoples Conference recommending the merger of small States with adjacent provinces of British India and the union of others into larger administrative units. This resolution was reaffirmed in the 1946 and 1947 sessions of the States Peoples Conference. Obviously, the States peoples could not implement it ; the only power which could carry it into effect was the Paramount Power. But the British Government was more interested in using the States as pawns on the chess-board of Indian politics than in improving their administration. Lord Wavell, however, in his capacity as the Crown Representative proposed a merger scheme according to which the smaller States were to be integrated with the neighbouring bigger States with which they had geographical, economic and political affinities. This scheme covered an area of

7,000 sq. miles and affected a population of over eight lakhs in Kathiawar. The following extract from a Government Communication would be found interesting in this connection :—

‘The Crown Representative has for a long period had under intensive review the perplexing political and administrative problems which arise from the existence of hundreds of small units..... Owing to the slenderness of their individual resources and general aversion to neighbourly cooperation, there has arisen..... geographical, administrative and economic fragmentation on a scale unknown anywhere else in the country. In the great majority of these units the revenue..... barely suffices for the private needs of the taluqdars and shareholders, and the amenities provided for their subjects are therefore sadly circumscribed..... The survey has fully established that without some drastic simplification of existing arrangements any kind of coordinated development of the countryside in any form or real progress is impossible.’

The scheme prepared by Lord Wavell was liked neither by the people nor by the rulers of the Kathiawar States. It was dropped. What could not be achieved by the British Government was accomplished in a remarkably successful way by Sardar Patel. He succeeded because his Gandhian approach to this delicate and difficult problem found support from all concerned, from the Congress, the States peoples, and the Rulers. The States peoples confided in him as they knew that he was their friend and champion. The Rulers also confided in him because they believed that as a follower of Gandhiji he would not be unfair to them but would safeguard and protect their legitimate rights and privileges. The Sardar told the rulers of the Orissa and Chattisgarh States (where the process of merger first commenced) that the only way in which the States could survive was by developing their capacity to secure the well-being of their subjects. But their limited resources prevented them from achieving this objective; the foundations on which alone a stable and responsible government could be built up did not exist in their States. The safety of the rulers as well as of the people lay in the merger of the States with Orissa. In case the Rulers agreed to merge, their private properties, palaces, and personal privileges would be guaranteed and they would get their privy purses. Realizing that their continued existence depended on the goodwill of the people and the support of the Government of India, both of which they lacked, and that if owing to popular agitation, their States were taken over by the Government, they would lose their privy purses also, the Rulers wisely agreed to the merger. The result of the merger was the dissolution of

the Eastern States Union. In a statement issued by Sardar Patel from Delhi he paid a warm tribute to the Rulers who had shown a benevolent regard for public good. It contained the following sentence: 'The Princes have by their act of abnegation purchased in perpetuity their right to claim the devotion of their people.' Gandhiji approved of the policy of merger and held that it was for the ultimate good of the rulers.

The policy of merger was much disliked in the princely circle. The rulers of Jodhpur, Bhopal, Bikaner and other States, among others, raised the question with Lord Mountbatten who defended the merger of the Orissa States but assured that it would not apply to the larger States. The Kathiawar States were next tackled and formed into the Saurashtra Union. The process went on till all the smaller and middle-size States had either been merged in the neighbouring provinces or united to form wider administrative units, and the total number of States reduced to 15.

**Democratisation of the States.**— The second great problem confronting Indian statesmen was the democratisation of the machinery of government in the States. During the British regime monarchic rule prevailed in every state, small or big. The ruler exercised more or less despotic power and depended upon the paramount power for his authority. While the struggle for Swaraj was going on in British India, the States people also began to agitate for the introduction of responsible government in the State and the removal of the various disabilities from which they suffered. After the attainment of Dominion Status on August 15, 1947, the desire of the peoples of the different States for responsible government became all the more intense and serious disturbances broke out in the small Orissa States. It was the inability of the rulers to maintain law and order in their territories which provided an occasion for the Government of India to intervene and press them for the merger of their States with Orissa. In a statement issued by him Sardar Patel said: 'I feel that for a correct appreciation of this important event it is necessary for me to explain the background and the policy underlying the settlement. Democratisation of the administration, which has long been the key-note of Congress policy towards the States, has become a pressing problem since August 15. The Princes themselves have in many cases begun

to realise the spirit of the time, and have been gradually introducing measures in accord with that spirit. Progress has been in some States slow, in others it has been swift, but everywhere it has been sure.' He told the Princes that their future lay in the service of the people and their country, and not in the continued assertion of their autocracy.

Be it said to the credit of the Princes that they responded to the spirit of the time and voluntarily surrendered to the people the powers they had so long enjoyed. It was an act of self-abnegation on their part for which they deserve the gratitude of the people. It was with a view to the introduction of responsible government that middle-size States which could not be merged into provinces were integrated into large and viable units. Integration helped the change-over from feudal autocracy to popular government. In this way a bloodless revolution took place in the Indian States.

In his *The Indian Revolution* Chanakya asks the question : 'How did this remarkable revolution, so historic yet so bloodless, come about in a country, known to be strongly wedded to ancient traditions and forms?' How did the descendants of rulers and potentates who had fought valiantly against the Mughals to keep up their independence, and the representatives of the great Marahatta Empire who had contested with the British for their sovereignty give up their territories willingly ?

He answers it by saying that on account of the spread of western education, the growth of the sentiment of Indian nationalism, the integration of economic life, the growth of political parties, etc., had rendered the conception of independent state units within India obsolete. The Indian Princes had been maintained in power by the British Government who always came to their support whenever the people rose against them. Had their authority been based on the willing and loyal support of the people as it was in the past the phenomenon of one Ruling Prince after another handing over his territories to the Government of the Union, accepting a financial settlement and retiring into private life would not have been witnessed. 'The fact was that the monarchical system in the States had lost its inherent strength : the authority of the Princes had become derivative ; their administrations were but reflections of the British Government and their sovereignty though clothed in the

decayed and tattered mantle of Indian kingship was, in the final analysis, supported and propped up by the British bayonets.' The forces of Indian nationalism had sapped the foundations of monarchic rule in the States ; it fell at the first impact of the forces arrayed against it. This however does not detract from the nobility, grace and patriotism shown by a very large majority of the Indian Princes. Sardar Patel handsomely acknowledged 'the ready and willing help which the Rulers have given me in implementing the policy of integration and democratisation. This involved on their part considerable sacrifice and self-denial. For all this I am most grateful.'

The integration of the States with the Indian Union and their democratisation without resort to force (except in the case of Hyderabad) is the greatest and most notable achievement of Sardar Vallabhbhai Patel. It is a triumph of Gandhian statesmanship of which we can be justly proud. It shall ever remain memorable in the annals of this ancient land of ours.

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